TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]100

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, PETITIONER,

vs.

L. H. WOODBURY AND VINCENT WOODBURY.

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE EIGHTH SUPREME JUDICIAL DISTRICT, STATE OF TEXAS.

PETITION FOR CERTIORARI FILED APRIL 26, 1920.

CERTIORARI AND RETURN FILED JULY 9, 1920.

(27,000)

(27,089)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 360.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, PETITIONER,

vs.

L. H. WOODBURY AND VINCENT WOODBURY.

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE EIGHTH SUPREME JUDICIAL DISTRICT, STATE OF TEXAS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 7, 1920.

a In the Supreme Court of the United States.

To Be Entitled

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,
Petitioner,
vs.
L. H. WOODBURY and VINCENT WOODBURY, Respondents.

In the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, at El Paso.

Entitled

No. 902.

L. H. WOODBURY & VINCENT WOODBURY, Plaintiffs in Error,
vs.
GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,
Defendant in Error.

Assignments of Error.

Now comes the Galveston, Harrisburg & San Antonio Railway Company, defendant in the above entitled cause, and files the following assignments of error upon which it will rely in the presentation of its petition for certiorari to the Supreme Court of the United States in the above entitled cause from the decree made by the Honorable Court of Civil Appeals for the Eighth Supreme Judicial District of Texas in this cause on the 6th day of February, 1919, reversing and rendering the case and from this defendant's mo-
b tion for re-hearing which was over-ruled by said Court of Civil Appeals on the 27th day of February, 1919.

1.

The Honorable Court of Civil Appeals for the Eighth Supreme Judicial District of Texas erred in holding that the contract in question did not fall within the provisions of section one of the original act regulating commerce and its amendments, Paragraph 8563, United States Compiled Statutes, 1918.

2.

The Honorable Court of Civil Appeals for the Eighth Supreme Judicial District of Texas erred in holding that the original Inter-

state Commerce Act as set forth in Article 8563 of the United States Compiled Statutes of 1918, compiled by the West Publishing Company did not govern this case.

3.

The Honorable Court of Civil Appeals for the Eighth Supreme Judicial District of Texas erred in holding that a suit for damages for loss of baggage checked by plaintiff from San Antonio, Texas to El Paso, Texas, on a ticket purchased by her from Timmins, Ontario, to El Paso, Texas, and return was not governed by the Act of Congress of the United States regulating commerce.

4.

The Honorable Court of Civil Appeals for the Eighth Supreme Judicial District of Texas erred in holding that in a case in which the Galveston, Harrisburg & San Antonio Railway Company had filed with and had approved by the Interstate Commerce Commission its rates and tariffs limiting its liability for loss of baggage to $100.00, where a greater value was not declared and paid for and in which the plaintiffs sued the said Galveston, Harrisburg & San Antonio Railway Company for an amount in excess of $100.00 for loss of baggage checked from San Antonio, Texas to El Paso, Texas, on a ticket purchased by her during the year 1917 from Timmins, Ontario, to El Paso, Texas, and return, she was entitled to recover a greater sum than $100.00, for baggage lost between San Antonio, Texas, and El Paso, Texas, even though she had not declared a greater value or paid additional charges therefor.

Wherefore petitioner prays that said decree of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, be reversed and that the judgment of the Trial Court be in all things affirmed and that judgment be entered that plaintiffs recover only the sum of $100.00 as decreed by the Trial Court.

T. J. BEALL,
BEALL, KEMP & NAGLE,
Attorneys for Petitioner.

[Endorsed:] Court of Civil Appeals, El Paso, Texas. Filed April 6, 1919. J. H. Driscoll, clerk.

In the Supreme Court of the United States.

To Be Entitled

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Petitioner,

vs.

L. H. WOODBURY & VINCENT WOODBURY, Respondents.

In the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, at El Paso.

Entitled

No. 902.

L. H. WOODBURY & VINCENT WOODBURY, Plaintiffs in Error,

vs.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Defendant in Error.

Know all men by these presents: That we, Galveston, Harrisburg & San Antonio Railway Company, as principal, and the other signers hereof, being residents of El Paso County, Texas, as sureties, are held and firmly bound unto Mrs. L. H. Woodbury and Vincent Woodbury in the sum of Fifteen Hundred ($1,500.00) Dollars, lawful money of the United States, to be paid to them and their respective executors, administrators and successors, to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and each of our heirs, executors and administrators, by these presents, sealed with our hands and dated this 12th day of April, 1919.

Whereas, the above named Galveston, Harrisburg & San Antonio Railway Company, is applying for a writ of certiorari to the Supreme Court of the United States to reverse the judgment of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, in the above entitled cause;

Now, therefore, the condition of this obligation is such that if the above named Galveston, Harrisburg & San Antonio Railway Company shall prosecute its said appeal to effect and shall pay all damages and costs if it fail to make good its plea, then this obligation shall be void, otherwise, to remain in full force and effect.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,
Principal.

By BEALL, KEMP & NAGLE,
Its Attorneys.

GEO. D. FLORY,
Surety.

C. R. MOREHEAD,
Surety.

THE STATE OF TEXAS,
County of El Paso:

On the 12th day of April, 1919, personally appeared before me Geo. D. Flory and C. E. Morehead, respectively, known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto and respectively acknowledged each for himself that he executed the same as his free act and deed for the purposes therein set forth, and said Geo. D. Flory and C. E. Morehead, being respectively by me duly sworn, says each for himself and not one for the other that he is a resident and householder of said County of El Paso, Texas, and that he is worth the sum of of Fifteen Hundred ($1,500.00) Dollars over and above his just debts and legal liabilities and property exempt from execution.

GEO. D. FLORY.
C. E. MOREHEAD.

Subscribed and sworn to and acknowledged before me on this 12th day of April, 1919.

[Seal Notary Public, County of El Paso, Texas.]

B. Y. BEATY,
[SEAL.] *Notary Public El Paso, County, Texas.*

The within bond is approved both as to sufficiency and form this 15 day of April, 1919.

JAMES R. HARPER,
Chief Justice Court of Civil Appeals for the Eighth Supreme Judicial District of Texas.

[Endorsed:]

No. 902.
L. H. Woodbury et ux.
vs.
Galveston, Harrisburg & San Antonio Ry. Co.
Supersedeas Bond for Certiorari to U. S. Supreme Court.
Court of Civil Appeals, El Paso, Texas.
Filed Apr. 16, 1919.
J. J. Driscoll, clerk.

In the Supreme Court of the United States.

No. —.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Petitioner,

v.

L. H. WOODRUFF et al., Respondents.

Certified Copy of the Transcript of the Record, Including All Proceedings Had in Said Cause in the Court of Civil Appeals of the Eighth Supreme Judicial District of the State of Texas, at El Paso, Texas.

Caption.

THE STATE OF TEXAS.
County of El Paso:

Be it remembered, that at a term of the Honorable Court of Civil Appeals in and for the Eighth Supreme Judicial District of the State of Texas, begun and holden in the City and County of El Paso and State aforesaid on the 7th day of October, A. D. 1918, and now in session, the following cause came on to be heard and determined on writ of error and the following proceedings were had therein, to-wit:

No. 1892.

L. H. Woodbury et al., Plaintiffs in Error,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant in Error.

Caption.

The State of Texas,
County of El Paso:

At a Term of the District Court Begun and Holden at El Paso, within and for the County of El Paso in the Forty-first Judicial District of the State of Texas, before the Hon. P. E. Price on January 7, A. D. 1918, and ending on the 24 day of March, A. D. 1918, the following were cause on for trial, to-wit:

In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas.

L. H. Woodbury et al.

v.

The Galveston, Harrisburg & San Antonio Railway Co.

No. 14263.

Plaintiff's Original Petition.

Filed April 10, 1917.

The State of Texas,
County of El Paso:

To the Honorable P. E. Price, Judge of said Court:

Now comes L. H. Woodbury, who resides in the City of Timmins, Ont., Canada, hereinafter called plaintiff, complaining of the Galveston, Harrisburg & San Antonio Railway Company, hereinafter called the defendant, and for cause of action represents to the court:

3 1. That the defendant is a private corporation duly incorporated under and by virtue of the laws of the State of Texas and doing business in El Paso County, State of Texas, with an office in the City of El Paso, in said county, in charge of Robert P. Calvert, who resides in said county, as its agent.

2. That heretofore, to-wit, on the 14th day of March, A. D. 1917, defendant owned, possessed and operated a certain railroad extending through and from the City of San Antonio, Bexar County, Texas, to the City of El Paso in El Paso County, Texas, and was

that, ever since her birth, and now is engaged in the business of common carrier.

3. That heretofore, towit, on the evening of the 11th day of March, A. D. 1917, in said City of San Antonio, plaintiff became a lawful passenger on one of defendant's passenger trains from said San Antonio to the aforesaid City of El Paso, and that immediately prior to taking passage upon said train plaintiff did deliver to defendant as her baggage a trunk containing wearing apparel and other articles, as hereinafter mentioned — same being hereto attached and made a part *statement of same being hereto attached and made a part* hereof marked Exhibit "A," the property of plaintiff of the reasonable value of $555.75, and that defendant received and accepted the same and agreed to carry the same as the baggage of the plaintiff from said San Antonio to said El Paso.

4. That defendant did not safely carry and deliver the aforesaid trunk and its contents, pursuant to its agreement as aforesaid [illegible] as it was in duty bound and obligated so to do, but on the contrary so carelessly and negligently acted and conducted itself in regard to the same in its business as a common carrier, that said trunk and its contents were wholly lost to plaintiff to her damage in the sum of $555.75.

Wherefore, plaintiff prays that defendant be cited to appear and make answer herein and for judgment for her damages $555.75, interest and cost and for such other and further relief, either in law or in equity, to which she may show herself entitled.

RUFUS B. DANIEL,
Attorney for Plaintiff.

(Endorsed:) No. 11283. In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas. L. H. Woodbury, Plaintiff, v. The Galveston, Harrisburg and San Antonio Railway Company, Defendant. Plaintiff's Original Petition, filed this 10th day of April, A. D. 1917. C. M. McKinney, Clerk District Court, El Paso Co., Texas. M. E. Haynes, Deputy.

Defendant's Second Amended Original Answer.

Filed February 11, 1918.

In the District Court of El Paso County, Texas, Forty-first Judicial *District.*

No. 11283.

L. H. Woodbury

v.

Galveston, Harrisburg & San Antonio Railway Company.

Now comes the Galveston, Harrisburg & San Antonio Railway Company, defendant in the above numbered and entitled cause,

and by leave of the court first had, files its second amended original answer in lieu of its first amended original answer heretofore filed herein, and for such amended answer says:

1.

Defendant excepts to plaintiff's petition heretofore filed herein, and for cause of exception says the same is insufficient in law and shows no cause of action against it and of this it prays judgment of the court.

BEALL, KEMP & NAGLE,
Attorneys for Defendant.

2.

Defendant specially excepts to plaintiff's petition because the same on its face shows that she is a married woman who at the time of the accrual of plaintiff's alleged cause of action and at the time of the institution of this suit was and still is a married woman, living with her husband and because no facts are shown, authorizing her to prosecute this suit alone and of this exception defendant prays judgment of the court.

3.

And for answer herein defendant denies, all and singular, the allegations in plaintiff's petition contained and says that the same are not true and that it is not guilty of the supposed wrongs, injuries and torts therein complain of or of any of them, and of this puts itself upon the country.

BEALL, KEMP & NAGLE,
Attorneys for Defendant.

6

4.

And specially answering, defendant says that plaintiff is not authorized to prosecute this suit alone, in that she at the time of the institution thereof was and ever since said time has been and still is a married woman living with her husband has in no wise been relieved from the martial disability to sue alone.

Wherefore, defendant says plaintiff is not authorized to prosecute this suit alone, and of this defendant puts itself upon the country.

BEALL, KEMP & NAGLE,
Attorneys for Defendant.

5.

Further answering defendant says that if plaintiff's trunk and contents were lost or destroyed or not delivered to plaintiff that the same occurred during the year 1917, to-wit, during the month of March, 1917, and that at the time the plaintiff, L. H. Woodbury, was traveling on an interstate or international ticket, purchased by

her during the year 1917, from some point in Canada and over a route extending through the various states of the United States into and through the State of Texas, and that said trunk and baggage was checked from San Anonio, Texas, to El Paso, Texas, on said interstate or international ticket and was and is interstate commerce, and the said plaintiff was then and there traveling on said ticket as a part of her trip which she was then and there making from the
7 Dominion of Canada through the various states of the Union, into and through the State of Texas, and was and is governed by the laws of the United States and the rules and regulations of Interstate Commerce Commission, and the said ticket was purchased during the year 1917, and that at the time of the purchase of said ticket and at the time of checking of said baggage, the defendant, Galveston, Harrisburg & San Antonio Railway Company, had duly promulgated and filed with the Interstate Commerce Commission its tariffs, rates, fares and charges for transportation between different points on its lines, and of the amount of baggage checked on each ticket and of the value of said baggage and that under the terms of said tariffs, rates and charges so filed with the Interstate Commerce Commission and which had theretofore been approved by the Interstate Commerce Commission and were then and there in force, and had been duly posted it was specially provided that the valuation of said baggage was limited to the sum of one hundred ($100.00) dollars, unless a greater value was declared and paid for by the passenger and that said tariffs, rates and schedules contained provisions limiting the free transportation of baggage on the lines of the defendant company between San Antonio and El Paso and elsewhere, to certain weight and the liability of the defendant company to one hundred ($100.00) dollars, and which tariffs, rates and schedules had a table of charges for excess weights and of excess values, which specially provided that for excess values in excess of $100.00, or fractional part thereof, an additional or special charge would be
8 made, and defendant alleges that the said tariffs, rates and schedules were then and there in full force and effect and that plaintiff did not declare a greater value than one hundred ($100.00) dollars and did not pay for any excess value over and above one hundred ($100.00) dollars.

Plaintiff alleges that amongst other things the said tariffs provided as follows:

"(*b*) Unless a greater sum is declared by the passenger and charges paid for increased valuation at time of delivery to carrier, the value of baggage, up to and including 150 pounds belonging to or checked for an adult passenger shall be deemed and agreed to be not in excess of $100.00 and the value of the baggage, up to and including 75 pounds, belonging to or checked for a child traveling on a half ticket shall be deemed and agreed to be not in excess of $50.00, and the value of baggage of a weight exceeding such allowance of 150 pounds and 75 pounds, respectively, upon which charges are paid in accordance with Rule 11, prescribing rates for the transportation of baggage of excess weight, shall be deemed and agreed to be not in excess of 66 2/3 cents per pound.

(c) If the passenger, at the time of checking baggage, declares a value greater than $100.00 for the baggage of an adult or $50.00 for that of a child traveling on half ticket, or in case the weight of the baggage exceeds that allowed under the tariff in connection with the transportation of a passenger, declares a value greater than 66 2/3 cents per pound there will be an additional charge at the rate of 10 cents for each $100.00 or fraction thereof, above such agreed maximum values. The minimum charge for increased valuation will be 10 cents.

(d) Charges for declared excess valuation must be prepaid in cash. Excess baggage coupons will not be accepted.

9 (e) Table of charges for excess valuation, Section 6, pages 12 and 13, is cancelled and withdrawn. On and after December 31, 1914, excess valuation charges will be computed as per paragraphs (a), (b), (c) and (d) of this rule."

And defendant alleges that the plaintiff did not, when she checked said baggage or at any time, declare the value of the baggage so checked to be in excess of one hundred (100.00) dollars, and did not pay for any weight in excess of 150 pounds, or for any value in excess of $100.00.

Wherefore defendant says that plaintiff can in no event recover more than $100.00 in this suit.

BEALL, KEMP & NAGLE.
Attorneys for Defendant.

(Endorsed:) No. 14693. In the District Court of El Paso County, Texas, Forty-first Judicial District. L. H. Woodbury v. Galveston, Harrisburg & San Antonio Railway Company. Defendant's Second Amended Original Answer. Filed this 14th day of Febv., A. D. 1918. C. M. McKinney, Clerk District Court, El Paso Co., Texas. R. M. Harvey, Deputy.

Plaintiff's First Supplemental Petition.

Filed Feb. 14, 1918.

In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas.

No. 14693.

L. H. WOODBURY
v.
GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

Now comes L. H. Woodbury, plaintiff in the above entitled and numbered cause and excepts to defendants' first amended
10 original answer because the same is insufficient in law and constitutes no defense or any part thereof.

Wherefore, plaintiff prays judgment on its exception.

RUFUS B. DANIEL.
Attorney for Plaintiff.

II.

Plaintiff specially excepts to the third paragraph of defendants' first amended original answer because the property sued for as is alleged in plaintiff's original petition, was the property of this plaintiff and because plaintiff's husband was not then within the boundaries of the United States.

Wherefore, plaintiff prays that she be permitted to maintain this suit.

RUFUS B. DANIEL,
Attorney for Plaintiff.

III.

And for further special exception to defendant's original amended answer herein, this plaintiff says: That paragraph four and so much thereof, as does allege that plaintiff's ticket provided for her transportation from some point in Canada through various states of the United States into the State of Texas, and through the State of Texas, does not, as a matter of law, constitute or cause such transportation to come within the jurisdiction of the Interstate Commerce Commission or its tariffs, rules or regulations.

11 Wherefore, plaintiff prays judgment of the court upon this exception and moves the court to strike out the portions of said defendant's first amended answer so excepted to.

RUFUS B. DANIEL,
Attorney for Plaintiff.

IV.

And for further special exceptions to defendant's first amended original answer, plaintiff says that paragraph 4 thereof, is indefinite and uncertain in that the same fails to show and specifically refer to that certain law or laws of the United States, and to that certain rule or regulation of the Interstate Commerce Commission, and that certain tariff or tariffs, or schedules mentioned by defendant.

Wherefore, plaintiff prays judgment on its exception.

RUFUS B. DANIEL,
Attorney for Plaintiff.

V.

And for further cause of action, plaintiff says: That if there was any provisions as alleged by defendant limiting the liability of defendant, that the same were at the time they were made, ever since have been, and now are unreasonable, unfair and unjust, that plaintiff had no knowledge of any provision, rule or regulation whereby an increased charge might have been paid and his liability assumed. That such fact if the same existed, was peculiarly within the
12 knowledge of defendant, and that defendant and its agents had a full, complete and sufficient opportunity to, but did

not inform this plaintiff thereof, if the same existed, at the time such baggage was checked.

Plaintiff further shows that such limitation was invalid, because defendant did negligently permit plaintiff's trunk to be burned, that is to say, plaintiff shows that there was a wreck of the train on which plaintiff was riding, and on which said trunk was being carried at the time it was lost, and that the trunk was burned in the baggage coach from lack of being thrown out in time, and that the defendant could have saved such trunk from being burned, and that the defendant and its agents and employees declared at the time, that the said trunk would not burn, that the coach in which it was being carried was constructed of steel and that the same did not burn until about an hour after the wreck had occurred, and that the failure of defendant, its agents or employees was gross negligence, amounting to the willful destruction on the part of defendant of plaintiff's trunk and its contents; and that such gross negligence on the part of defendants was the proximate cause of the destruction of plaintiff's trunk and its contents.

Wherefore, premises considered, plaintiff prays that she be permitted to maintain this suit in this court and that upon final hearing, she may have judgment against defendant for the sum of $555.75, with interest thereon from the 14th day of March,
13 1917, and for such other and further relief, general and special, in law or in equity, to which she may show herself entitled.

RUFUS B. DANIEL,
Attorney for Plaintiff.

(Endorsed:) No. 14693. In the 41st District Court. El Paso County, Texas. L. H. Woodbury v. Galveston, Harrisburg & San Antonio Ry. Co. Plaintiff's First Supplemental Petition. Filed this 14 day of Feby., A. D. 1918. C. M. McKinney, Clerk District Court, El Paso Co., Texas. R. M. Harvey, Deputy.

Motion of Vincent Woodbury to be Made Plaintiff.

Filed February 14, 1918.

In the Forty-first District Court, El Paso County, Texas.

No. 14693.

L. H. WOODBURY

v.

GALVESTON, H. — S. A. RY.

Comes now Vincent Woodbury by attorney and moves the court to permit him to intervene therein and be made a party plaintiff herein and shows:

That he is the husband of L. H. Woodbury, plaintiff in said suit,

Wherefore, Vincent Woodbury prays that this motion be sustained and the clerk be directed to enter Vincent Woodbury as plaintiff.

RUFUS B. DANIEL,
Attorney for Plaintiff.

(Endorsed:) No. 14693. L. Woodbury v. G. H. & S. A. Ry. Co. Motion of Vincent Woodbury to be made plaintiff filed Feb. 14. C. M. McKinney, district clerk. By E. M. Montes, deputy.

14 *Order Granting Motion to Make Vincent Woodbury Plaintiff.*

Book 13, Page 402, Minutes of the Forty-first Judicial District Court, El Paso County, Texas.

In the Forty-first District Court, El Paso County, Texas, Fourteenth Day of February, A. D. 1918.

No. 14693.

L. H. Woodbury

v.

G., H. & S. A. Ry. Co.

This day came on to be heard the motion of Vincent Woodbury, husband of L. H. Woodbury, plaintiff, praying that he be made a party plaintiff herein, and the court having heard and understood the same, hereby orders that Vincent Woodbury be permitted to intervene and be made a party hereto and orders the clerk of the court to enter his, Vincent Woodbury's name, as a party plaintiff herein, and that the costs hereof be taxed against said Vincent Woodbury.

Charge of the Court and Issues Submitted to the Jury by the Court and Findings of the Jury.

Filed February 14, 1918.

In the District Court of El Paso County, Texas, Forty-first Judicial District.

No. 14693.

L. H. Woodbury

v.

Galveston, Harrisburg & San Antonio Railway Company.

Gentlemen of the Jury:

The court submits for your finding, this issue:

What do you find from a preponderance of the evidence, was the reasonable value of plaintiff's trunk and contents to plaintiff at the time of its loss and destruction?

P. R. PRICE,
Judge.

We, the jury, find the value of the trunk and its contents to have been the sum of five hundred dollars.

C. F. EDERLE,
Foreman.

(Endorsed:) No. 14693. L. H. Woodbury v. G. H. & S. A. Ry. Co., charge of the court and issue submitted to the jury by the court and findings of the jury. Filed this 14th day of February, A. D. 1918. C. M. McKinney, Clerk District Court El Paso Co. Texas. E. M. Montes, Deputy.

Judgment.

Book 13, Page 437, Minutes of the Forty-first Judicial District Court, El Paso County, Texas.

In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas, Fourteenth Day of February, A. D. 1918.

No. 14693.

L. H. Woodbury & Vincent Woodbury

v.

Galveston, Harrisburg & San Antonio Railway Company.

This day in the above entitled and numbered cause wherein L. H. Woodbury and Vincent Woodbury, her husband, are plaintiffs, and

the Galveston, Harrisburg & San Antonio Railway Company is defendant, came the parties by their attorneys and announced ready for trial, and thereupon came a jury of good and lawful men, to-wit: C. F. Edelie and eleven others, who being duly empaneled and sworn, and hearing the pleadings, evidence and argu-
16 ment of counsel, in response to the special issue submitted to them, returned the following verdict:

"We, the jury, find the value of the trunk and its contents to have been the sum of five hundred dollars.

(Signed) C. F. EDERLE,
Foreman."

And the court being of the opinion that the law is for the plaintiffs, it is therefore considered, ordered and adjudged by the court that the said plaintiffs, L. H. Woodbury and Vincent Woodbury her husband, do have and recover of the said defendant, the Galveston, Harrisburg & San Antonio Railway Company, the sum of $100.00 with interest thereon at 6 per cent per annum from the 14th day of March, 1917, together with their costs in this behalf expended, and that they have their execution, to which action and ruling of the court plaintiffs then and there in open court excepted.

Plaintiff's Motion to Revise Judgment and Motion to Correct Judgment.

Filed April 1, 1918.

In the District Court of El Paso County, in and for the Forty-first Judicial District of the State of Texas.

No. 14693.

L. H. Woodbury et al., Plaintiffs,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant.

Motion to Amend and Correct Judgment.

Now comes plaintiff in the above entitled and numbered
17 cause and moves the court to revise and correct the judgment pronounced by the court and entered in said cause and as reason therefor shows to the court.

That on the 14th day of February, A. D. 1918, and at the close of the trial of said cause plaintiff prepared and delivered to the court for its approval and signature a judgment which was in words as follows, to wit:

"In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas.

No. 14623.

L. H. Woodbury & Vincent Woodbury

v.

Galveston, Harrisburg & San Antonio Railway Company.

Fourteenth day of Feb., A. D. 1918.

This day in the above entitled and numbered cause wherein L. H. Woodbury and Vincent Woodbury, her husband, are plaintiffs, and the Galveston, Harrisburg & San Antonio Railway Company is defendant, came the parties by their attorneys and announced ready for trial, and thereupon came a jury of good and lawful men, to-wit: C. F. Eberle and eleven others, who being duly empaneled and sworn, and hearing the pleadings, evidence and argument of counsel, in response to the special issue submitted to them, returned the following verdict:

'We, the jury, find the value of the trunk and its contents to have been the sum of five hundred dollars.

(Signed) C. F. EBERLE.
Foreman.'

And the court being of the opinion that the law is for the plaintiffs, it is therefore, considered, ordered and adjudged by the court that the said plaintiffs, L. H. Woodbury and Vincent Woodbury, her husband, do have and recover of the said defendant, the Galveston, Harrisburg & San Antonio Railway Company, the
18 sum of $500.00 with interest thereon at 6 per cent per annum from the 14th day of March, 1917 together with their cost in this behalf expended, and that they have their execution to which action and ruling of the court defendant then and there in open court excepted.

II.

That the judgment pronounced by the court and entered in said cause in plaintiff's favor in the sum of $100.00 does not conform to the special verdict of the jury which was and is:

'We, the jury, find the value of the trunk and its contents to have been $500.00.'

And plaintiffs aver that the judgment so entered by the court was erroneous and contrary to the law and the evidence in this cause, because the same was not for the sum of $500.00 with interest thereon at the rate of 6 per cent per annum from March 14, 1917, together with costs of suit.

III.

Plaintiffs aver that the judgment set out in paragraph 1 thereof should have been approved and signed by the court and that the failure of the court to approve and sign the same was, as is more particularly set out and shown in plaintiff's assignment of error and each of them, which are filed herein and hereby referred to and made a part hereof, error.

Wherefore the premises considered, plaintiffs pray the court that said judgment be corrected and revised so as to read the same as that judgment set out in Paragraph 1 hereof, and for such other relief as plaintiffs may be entitled to.

RUFUS B. DANIEL,
Attorney for Plaintiffs.

(Endorsed:) No. 14033. In the 41st District Court, El Paso County, Texas. L. H. Woodbury et al. v. Galveston, H. & S. A. Ry. Co., plaintiffs' motion to revise and correct judgment. 19 Filed this 1st day of April, A. D. 1918. C. M. McKinney, Clerk District Court, El Paso Co., Texas. E. M. Montes, Deputy.

Order of the Court Overruling Motion to Revise and Correct Judgment.

Book 13, Page 477.

In the District Court of El Paso County, in and for the Forty-first Judicial District of the State of Texas. First Day of April, A. D 1918.

No. 14033.

L. H. Woodbury et al., Plaintiffs,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant.

This day came on to be heard motion of plaintiffs in the above entitled and numbered cause to revise and correct a judgment pronounced by the court and entered in said cause and the same having been considered by the court.

It is ordered that said motion be and the same is hereby overruled. Plaintiffs then and there in open court excepted.

Plaintiffs' Bill of Exceptions No. 1.

Filed April 1, 1918.

In the District Court of El Paso County, Texas, Forty-first Judicial District.

No. 14883.

L. H. Womack et al., Plaintiff,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant.

Bill of Exceptions No. 1.

Be It Remembered that upon the trial of the above entitled and numbered cause on the 11th day of February, 1918, while W. K. Jones, a witness for the defendant was testifying on direct examination, he was asked the following question by attorney for defendant:

"Q. What is this, Mr. Jones (handing sign to witness)?

Mr. Daniel: I object to this being read in evidence for the reason that the transportation on which, or the ticket on which the plaintiff was traveling was not an interstate ticket, and further because, if such tariff, rates or regulations contained any provision which would limit the liability of the defendant, the same were in violation of the law.

The Court: Overrule the objection.

(Exception.)

(Sign.)

Galveston, Harrisburg & San Antonio Railway Company.

Complete published files of this company's tariffs are located at General Freight Office, Houston, Texas. (for freight.)

General Passenger Office, Houston, Texas. (for passenger.)

The rate and fare schedules applying from or at this station and indices of this company's tariffs are on file in this office and may be inspected by any person upon application, and without the assignment of any reason for such desire.

The agent, or other employee on duty in the office, will lend any assistance desired in securing information from or in interpreting such schedules.

J. B. CHRISTIAN,
General Freight Agent.
T. J. ANDERSON,
General Passenger Agent.
C. K. DUNLAP,
Traffic Manager."

The foregoing bill of exceptions No. 1 having been reduced to writing by counsel for plaintiff and having been presented to the undersigned judge of said court for allowance and signature within thirty days from the adjournment of the term of the court at which said cause was tried and within the time required by law, and having been by me submitted to adverse counsel and found by him to be correct and having been by me found to be correct, is hereby allowed, approved and ordered filed by the clerk of this court
21 as a part of the record in such case, this — day of ——, A. D. 1918.

P. E. PRICE,
Judge of the District Court of El Paso County, Texas, Forty-first Judicial District.

(Endorsed:) No. 14083. In the 41st District Court of El Paso Co., Tex. L. H. Woodbury v. G., H. & S. A. Ry. Co., plaintiff. Bill of exception No. 1. Filed this 1st day of April, A. D. 1918. C. M. McKinney, clerk district court, El Paso Co., Texas. E. M. Montes, deputy.

Plaintiff's Bill of Exceptions No. 2.

Filed April 1, 1918.

In the District Court of El Paso County, Texas, Forty-first Judicial District.

No. 14083.

L. H. Woodbury et al., Plaintiffs,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant.

Bill of Exceptions No. 2.

Be It Remembered that upon the trial of the above entitled and numbered cause on the 11th day of February, A. D. 1918, and while W. K. Jones, a witness for defendant, was testifying, the defendant was permitted to introduce in evidence certain regulations of the Interstate Commerce Commission, to-wit:

"Judge Nagle: I offer a certified copy of the regulations from the Secretary of the Interstate Commerce Commission at Washington, dated October 11, 1917.
22 Mr. Daniel: I object to any regulations of the Interstate Commerce Commission being offered in evidence, because the same are irrelevant and immaterial. More specifically, it not having been shown in fact that the transportation of the plaintiff, it not being interstate commerce, therefore the interstate commerce regulations would have nothing to do with it.

The Court: Overrule the objection. You waive the formal reading of the entire instrument?

Mr. Daniel: Yes, but I object to the offer in any manner. (Exception).

Said regulations reading as follows:

"Supplement No. 8 to I. C. C. No. C-348,

(Cancelling Supplement No. 7.)

Texas & New Orleans Railroad Company.

In connection with the Galveston, Harrisburg & San Antonio Railway Company.

(PX 4—No. 132.)

Houston & Texas Central Railroad.

(PX 4—No. 1.)

The Houston East & West Texas Railway Company.

(PX 4—No. 1.)

Houston & Shreveport Railroad Company.

(PX 4—No. 1.)

Lake Charles & Northern Railroad.

(PX 5—No. 1.)

[illegible] Western Railroad Company.

(PX 5—No. 1.)

[illegible] Texas Railroad and Steamship Company.

(PX 5—No. 1.)

Passenger Traffic Department.

Supplement No. 8.

Tariff 8—No. 13.

(Cancelling Supplement No. 7.)

Interstate Joint Tariff

of

Excess Baggage Charges, Baggage Rules and Regulations, Transportation of Corpses to Interstate Destinations, Charges for Excess

Weight, Size and Valuation, Excess Baggage Permits and Charges for Excess Baggage Over to the Pacific Coast.

Applying from stations on the Galveston, Harrisburg & San Antonio Railway, Houston & Texas Central Railroad, The Houston East & West Texas Railway, Houston & Shreveport Railroad, Lake Charles & Northern Railroad, Louisiana Western Railroad Company, Morgan's Louisiana & Texas Railroad and S. S. Co., Texas & New Orleans Railroad,

To

Inter-state destinations in the United States, Canada and Mexico and from Stations in Louisiana on the Houston & Shreveport Railroad Company to Stations in Texas on the Houston East & West Texas Railway Company and vice versa.

This tariff does not cover excess baggage charges or baggage rules and regulations between points in the State of Texas nor between points in the State of Louisiana.

Issued July 25, 1914. Effective September 1, 1914. (Except as noted in individual items.)

Baggage of Excess Value.—(Continued.)

(b) Unless a greater sum is declared by the passenger and charges paid for increased valuation at time of delivery to carrier, the value of the baggage, up to and including 150 pounds, belonging to or checked for an adult passenger shall be deemed and agreed to 24 be not in excess of $100.00 and the value of the baggage, up to and including 75 pounds belonging to or checked for a child traveling on a half ticket shall be deemed and agreed not to be in excess of $50.00, and the value of baggage of a weight exceeding such allowance of 150 pounds and 75 pounds, respectively, upon which charges are paid in accordance with Rule 11, prevailing rates for the transportation of baggage of excess weight, shall be deemed and agreed to be not in excess of six 2-3 cents per pound.

(c) If the passenger, at the time of checking baggage, declares a value greater than $100.00 for the baggage of an adult or $50.00 for that of a child, traveling on a half ticket, or in case the weight of the baggage exceeds that allowed under the tariff in connection with the transportation of a passenger, declares a value greater than six 2-3 cents per pound there will be an additional charge at the rate of 10 cents for each $100.00 or fraction thereof, above such agreed maximum values.

The minimum charge for increased valuation will be 10 cents.

(d) Charges for declared excess valuation must be prepaid and in cash. Excess baggage coupons will not be accepted.

(e) Table of charges for excess valuation, Section 6, pages 12 and 13, is cancelled and withdrawn. On and after December 31, 1914, excess valuation charges will be computed as per paragraphs (a), (b), (c) and (d) of this rule.

(f) This tariff does not cover the transportation of baggage when the journey is wholly within the State of Texas or wholly within the State of Louisiana.

The above and foregoing Bill of Exceptions No. 2, having been reduced to writing by counsel for plaintiff and having been presented to the undersigned judge of said court for allowance and signature within thirty days from the adjournment of the
25 term of the court at which said cause was tried and within the time required by law, and having been by me submitted to adverse counsel and found by him to be correct and having been by me found to be correct, is hereby allowed, approved and ordered filed by the clerk of this court as a part of the record in such cause, this first day of April, A. D. 1918.

P. R. PRICE,
Judge of the District Court of
El Paso County, Texas.

(Endorsed:) No. 14693. In the 41st Dist. Court El Paso Co., Tex. L. H. Woodbury et al., v. G. H. & S. A. Ry., Plaintiff's Bill of Exception No. 2. Filed this 1st day of April, A. D. 1918. C. M. McKinney, clerk District Court, El Paso Co., Texas. E. M. Montes, deputy.

Plaintiff's Bill of Exceptions No. 3.

Filed April 1, 1918.

In the District Court of El Paso County, Texas, Forty-first Judicial District.

No. 14693.

L. H. WOODBURY et al., Plaintiffs,

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Defendant.

Bill of Exceptions No. 3.

Be It Remembered that upon the trial of the above entitled and numbered cause on the 14th day of February, 1918, before any evidence had been offered by either of the parties herein, the plaintiff requested the court to determine and rule upon plaintiff's special demurrers to defendant's answer; but that the court withheld a determination of the same to which action of the court plaintiff then and there excepted because plaintiff's contract for transportation
26 was not subject to the act to regulate commerce nor to the rules and regulations filed with the Interstate Commerce Commission.

The foregoing Bill of Exceptions No. 3, having been reduced to writing by counsel for plaintiff and having been presented to the undersigned judge of said court for allowance and signature within thirty days from the adjournment of the term of the court at which said cause was tried and within the time required by law and having

been by me found to be correct, is hereby allowed, approved and ordered filed by the clerk of this court as a part of the record in such cause, this first day of April, A. D. 1918.

P. R. PRICE,
Judge of the District Court of El Paso County, Texas, Forty-first Judicial District.

(Endorsed:) No. 14693. In the 41st Dist. Court El Paso Co., Texas. L. H. Woodbury v. G. H. & S. A. Ry., Plaintiff's Bill of Exceptions No. 3. Filed April 1st, 1918. C. M. McKinney, clerk District Court El Paso Co., Texas. E. M. Montes, deputy.

Plaintiff's Bill of Exceptions No. 4.

Filed April 1st 1918.

In the District Court of El Paso County Texas Forty-first Judicial District.

No. 14693.

L. H. WOODBURY et al., Plaintiffs,

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Defendant.

Bill of Exceptions No. 4.

27 Be It Remembered that upon the trial of the above entitled and numbered cause on the 14th day of February, 1918, that after the jury had returned its verdict and the same had been received by the court, that the plaintiff then and there prepared and presented to the court for its approval and signature a judgment which was in words as follows, to-wit:

"In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas, Fourteenth Day of Feb., A. D. 1918.

No. 14693.

L. H. WOODBURY & VINCENT WOODBURY

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

This day in the above entitled and numbered cause wherein L. H. Woodbury and Vincent Woodbury, her husband, are plaintiffs, and the Galveston, Harrisburg & San Antonio Railway Company, is defendant, came the parties by their attorneys and announced ready

for trial, and thereupon came a jury of good and lawful men, to-wit: C. F. Ederle and eleven others, who being duly empaneled and sworn, and hearing the pleadings, evidence and argument of counsel, in response to the special issue submitted to them, returned the following verdict:

"We, the jury, find the value of the trunk and its contents to have been the sum of five hundred dollars.

(Signed) C. F. EDERLE,
Foreman."

And the court being of the opinion that the law is for the plaintiffs, it is therefore considered, ordered and adjudged by the court that the said plaintiffs, L. H. Woodbury and Vincent Woodbury, her husband, do have and recover of the said defendant, the Galveston, Harrisburg & San Antonio Railway Company, the sum of
28 $500.00 with interest thereon at 6 per cent per annum from the 14th day of March, 1917, together with their costs in this behalf expended, and that they have their execution, to which action and ruling of the court defendant then and there in open court excepted.

_____,
Judge Forty-first Judicial District of El Paso County, Texas.

And be it further remembered that the court failed to sign or approve the above and foregoing judgment but that thereafter, to-wit, on the 2d day of March, A. D. 1918, and during the term of the court at which the trial was had, the court did make, file and instruct the clerk to enter a judgment in said cause, which was in words as follows, to-wit:

"In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas, Fourteenth Day of February, A. D. 1918.

No. 14693.

L. H. WOODBURY and VINCENT WOODBURY

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

This day in the above entitled and numbered cause wherein L. H. Woodbury and Vincent Woodbury, her husband, are plaintiffs, and the Galveston, Harrisburg & San Antonio Railway Company is defendant, came the parties by their attorneys and announced ready for trial, and thereupon came a jury of good and lawful men, to-wit: C. F. Ederle and eleven others, who being duly empaneled and sworn, and hearing the pleadings, evidence and argument of counsel, in response to the special issue submitted to them, returned the following verdict:

"We, the jury, find the value of the trunk and its contents to have been the sum of five hundred dollars.

(Signed) C. F. EDERLE,
Foreman."

29 And the court being of the opinion that the law is for the plaintiffs, it is therefore considered, ordered and adjudged by the court that the plaintiffs L. H. Woodbury and Vincent Woodbury, her husband, do have and recover of the said defendant, the Galveston, Harrisburg and San Antonio Railway Company, the sum of $100.00 with interest thereon at 6 per cent per annum from the 14th day of March, 1917, together with their costs in this behalf expended, and that they have their execution, to which action and ruling of the court plaintiffs then and there in open court excepted.

P. R. PRICE,
Judge of the Forty-first Judicial District of Texas in and for the County of El Paso.

The foregoing Bill of Exceptions No. 4, having been reduced to writing by counsel for plaintiff and having been presented to the undersigned judge of said court for allowance and signature within thirty days from the adjournment of the term of the court at which said cause was tried and within the time required by law, and having been by me submitted to adverse counsel and found by him to be correct and having been by me found to be correct, is hereby allowed, approved and ordered filed by the clerk of this court as a part of the record in such cause, this first day of April, A. D. 1918.

P. R. PRICE.
Judge of the Forty-first District Court of El Paso County, Texas, Forty-first Judicial District.

30 (Endorsed:) No. 14693. In the 41st Dist. Court, El Paso Co., Tex. L. H. Woodbury vs. G. H. & S. A. Ry. Co., Plaintiff's Bill of Exception No. 4. Filed this 1st day of April, A. D. 1918. C. M. McKinney, clerk District Court, El Paso Co., Texas. E. M. Montes, deputy.

Plaintiffs' Assignments of Error.

Filed April 1st, 1918.

In the District Court of El Paso County, Texas, Forty-first Judicial District.

No. 14693.

L. H. Woodbury et al., Plaintiffs,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant.

Assignments of Error.

L. H. Woodbury et al., plaintiffs in the above entitled and numbered cause, assign the following as errors committed by the court in the trial of said cause on the 14th day of February, A. D. 1918, to-wit:

First Assignment of Error.

The court erred in refusing to pronounce judgment for plaintiff in the sum of $500.00;

(*a*) Because the jury found that the value of the plaintiff's trunk and its contents was $500.00.

(*b*) Because the contract upon which plaintiff was traveling was made in the Province of Ontario, Dominion of Canada, and was subject to the laws of the Province of Ontario, which said laws are in the absence of pleading and proof to the contrary, the same as the laws of the State of Texas.

31 (*c*) Because the contract itself was not offered in evidence, nor was there any evidence offered tending to show that the contract upon which plaintiff was being transported did in any manner provide for limitation of liability in the event of the loss to plaintiff of her baggage.

Second Assignment of Error.

The special verdict of the jury was that the value of plaintiff's trunk and its contents was $500.00, which under Article 1985 is conclusive and the failure of the court to enter that certain judgment more fully described in plaintiffs' Bill of Exception No. 4 hereby referred to and made a part hereof and tendered by plaintiff to the court under which plaintiff would have recovered the sum of $500.00 was error in that the same is contrary to Article No. 1990 of the Revised Statutes of the State of Texas.

Third Assignment of Error.

The court erred in admitting in evidence that tariff containing rules and regulations of defendants filed with the Interstate Commerce Commission, the same being more fully shown in plaintiff's Bill of Exception No. 2 hereby referred to and made a part hereof.

(*a*) Because the transportation of plaintiff was not interstate commerce nor subject to the acts to regulate commerce nor subject to the jurisdiction of the Interstate Commerce Commission.

(*b*) Because the transportation of plaintiff's trunk and its contents was not interstate commerce, nor subject to the juris-
32 diction of the Interstate Commerce Commission.

(*c*) Because said tariff shows on its face that the same only applies to the baggage being transported from stations on the Galveston, Harrisburg and San Antonio Railway Company et al. to interstate destinations in Canada.

(*d*) Because said tariff shows on its face that:

"This tariff does not cover excess Baggage charges or baggage rules and regulations between points in the State of Texas."

(*e*) Because page 3, Section 1 (*f*) of said tariff, reads:

"This tariff does not cover the transportation of baggage when the journey is wholly within the State of Texas or wholly within the State of Louisiana."

Fourth Assignment of Error.

The court erred in pronouncing judgment for only $100.00 instead of $500.00 in plaintiff's favor.

(*a*) Because such judgment implied that the transportation of plaintiff and her baggage was subject to a limitation of liability in event of the loss of her baggage; and because the contract upon which plaintiff and baggage were being transported was not in evidence.

(*b*) Because the transportation of plaintiff and her baggage was not interstate commerce nor subject to the Act to Regulate Commerce nor subject to the jurisdiction of the Interstate Commerce Commission.

33 (*c*) Because the contract for the transportation of plaintiff was subject to the laws of the Province of Ontario, Canada, which laws are by our statutes the same as the laws of the State of Texas; and because such judgment implied that there was a valid limitation of liability and under the laws of the State of Texas a common carrier cannot limit its liability.

Fifth Assignment of Error.

The court erred in admitting in evidence that certain sign shown to have been posted in the defendant's depot at San Antonio because the transportation of plaintiff and her baggage was not interstate commerce, nor subject to the Act to Regulate Commerce nor subject to the jurisdiction of the Interstate Commerce Commission.

Sixth Assignment of Error.

The court erred in overruling plaintiffs' motion to correct and revise judgment, which said motion is on file amongst the papers in this cause and hereby referred to and made a part hereof and which said motion, if sustained, would have corrected and revised said judgment so that plaintiff might have and could have recovered from defendant the sum of $500.00, the same being the value of plaintiff's trunk and its contents as found by the verdict of the jury which tried this cause.

RUFUS B. DANIEL,
Attorney for Plaintiffs, L. H. Woodbury and Vincent Woodbury.

34 (Endorsed:) No. 14693. In the 41st Dist. Court, El Paso County, Tex. L. H. Woodbury et. al. vs. Galveston, H. & S. A. Ry. Plaintiff's assignments of error. Filed this 1st day of April, A. D. 1918. C. M. McKinney, clerk district court, El Paso Co., Texas. M. E. Haynes, deputy.

Plaintiffs' Petition for Writ of Error.

Filed April 1st, 1918.

In the District Court of El Paso County, Texas, Forty-first Judicial District.

No. 14693.

L. H. Woodbury et al., Plaintiffs,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant.

To the Clerk of the District Court in and for El Paso County, Texas:

The petition of the above named plaintiffs respectfully shows:

I.

That the names of the plaintiffs herein and each of them is Mrs. L. H. Woodbury and Vincent Woodbury, her husband; and that their residence is in the City of Timmins, Province of Ontario,

Dominion of Canada, and that the name of the defendant is, to-wit, the Galveston, Harrisburg & San Antonio Railway Company, it being a private corporation organized and existing under and by virtue of the laws of the State of Texas and doing the business of a common carrier in the State of Texas and as such maintains an office for the transportation of its business in said El Paso County, Texas, in charge of L. B. McDonald, who resides in El Paso
35 County, Texas, and is a local agent of the defendant.

II.

That heretofore, to-wit, on or about the 2d day of March, A. D. 1918, a judgment was rendered in this court for the sum of $100.00 and costs of suit in favor of the above named plaintiffs and against the defendant above named in a certain cause pending in this court, No. 14693 on the docket thereof; and that said judgment was in words as follows, to-wit:

"In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas.

No. 14693.

L. H. WOODBURY and VINCENT WOODBURY

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

Fourteenth Day of Feb., A. D. 1918.

This day in the above entitled and numbered cause wherein L. H. Woodbury and Vincent Woodbury, her husband, are plaintiffs, and the Galveston, Harrisburg & San Antonio Railway Company is defendant, came the parties by their attorneys and announced ready for trial, and thereupon came a jury of good and lawful men, to-wit, C. F. Elderle and 11 others, who being duly empaneled and sworn and hearing the pleadings, evidence and argument of counsel, in response to the special issue submitted to them, returned the following verdict:

"We, the jury, find the value of the trunk and its contents to have been the sum of Five Hundred Dollars.

(Signed) C. F. EDERLE.
Foreman."

And the court being of the opinion that the law is for the plaintiffs, it is therefore considered, ordered and adjudged by the
36 court that the plaintiffs, L. H. Woodbury and Vincent Woodbury, her husband, do have and recover of the said defendant, the Galveston, Harrisburg and San Antonio Railway Company, the sum of $100.00 with interest thereon at 6 per cent per annum from the 14th day of March, 1917, together with their costs in this behalf expended, and that they have their execution, to which action

and ruling of the court plaintiffs then and there in open court excepted.

P. R. PRICE.
Judge of the Forty-first Judicial District of Texas, in and for the County of El Paso."

III.

Plaintiffs further show that they desire to remove the said judgment to the Court of Civil Appeals of the Eighth Supreme Judicial District of the State of Texas for revision and correction so that when the same is finally revised and corrected these plaintiffs may have and recover from defendants the sum of $500.00 with interest thereon at the rate of six per cent per annum from the 14th day of March, A. D. 1917.

IV.

Plaintiffs further show that heretofore, to-wit, on the 1st day of April, A. D. 1918, they filed amongst the papers in this case their assignments of error and presented to the court a motion to revise and correct the aforesaid judgment for the reasons set out in said motion and more particularly described in plaintiffs' assignments of error, each of which said motion to revise and correct judg-
37 ment and each of which said Assignments of Error No. First, Second, Third, Fourth, Fifth and Sixth are hereby referred to and made a part hereof.

V.

Your petitioners present herewith a writ of error bond in the sum and condition as required by law.

VI.

Your petitioner further shows that Messrs. Beall, Kemp and Nagle, residents of El Paso County, Texas, are the attorneys of record for the above named defendant in this cause.

Wherefore, your petitioner prays that citation in error issue to the said Galveston, Harrisburg and San Antonio Railway Company, according to law and that the said judgment and order may be removed to the said Court of Civil Appeals for revision and correction of the many errors therein, which said errors are more fully shown in and upon your petitioner's assignments of error filed amongst the papers in this cause, which said assignments of error are hereby referred to and made a part hereof; and for all other proper relief.

RUFUS B. DANIEL,
Attorney for L. H. Woodbury and Vincent Woodbury, Petitioners.

Endorsed: No. 14633. In the 41st District Court El Paso County, Texas. L. H. Woodbury et al., vs. Galveston, H. & S. A. Ry Co. Plaintiff-' Petition for Writ of Error. Filed this 1st
38 day of April, A. D. 1918. C. M. McKinney, clerk District Court, El Paso Co., Texas. E. M. Montes, deputy.

Plaintiffs' in Error Cost Bond.

Filed April 1st, 1918.

In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas.

No. 14633.

L. H. Woodbury et al., Plaintiffs,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant.

Whereas, at a regular term of the District Court of El Paso County, in and for the Forty-first Judicial District of the State of Texas, in the above entitled and numbered cause, to-wit, on the 14th day of February, A. D. 1918, the said L. H. Woodbury recovered a judgment against the Galveston, Harrisburg & San Antonio Railway Company in the sum of $100.00 with interest thereon and all costs of suit, to which judgment plaintiff then and there excepted; and

Whereas, the said L. H. Woodbury et al. have sued a writ of error to the Court of Civil Appeals of the Eighth Supreme Judicial District at El Paso County, Texas.

Now therefore, we, L. H. Woodbury as principal and Ross E. Bryan and E. W. King as sureties, acknowledge ourselves bound to pay the Galveston, Harrisburg & San Antonio Railway Company, the sum of $100.00, conditioned that the said L. H. Woodbury et al., plaintiffs, shall prosecute their writ of error with effect and
39 shall pay all costs which shall accrue in the court below and which may accrue in the Court of Civil Appeals and the Supreme Court if the same be adjudged against them.

Witness our hands this the 1st day of April, A. D. 1918.

L. H. WOODBURY,
Principal.
By RUFUS B. DANIEL,
Her Attorney.
ROSS E. BRYAN,
Surety.
E. W. KING,
Surety.

I have fixed the probable amount of costs in this suit in the sum of $50.00 and approve the foregoing bond this the 1st day of April, 1918.

C. M. McKINNEY,
Clerk of the District Court
of El Paso County, Texas.
By E. M. MONTES,
Deputy.

(Endorsed:) No. 14633. In the 41st District Court of El Paso County, Texas. L. H. Woodbury et al. vs. Galveston, H. & S. A. Ry. Co. Plaintiffs' in Error Cost Bond. Filed this 1st day of April, A. D. 1918. C. M. McKinney, Clerk District Court El Paso Co., Texas. E. M. Montes, deputy.

Citation in Error, Issued April 1st, 1918, and Sheriff's Return, etc.

The State of Texas to the Sheriff or any Constable of El Paso County, Greeting:

You are hereby commanded forthwith to summon The Galveston, Harrisburg & San Antonio Railway Company, a private corporation doing business in El Paso County, Texas, through an office in charge of L. B. McDonald, a resident of said El Paso County, Texas, as its superintendent and agent to appear before our Court of Civil Appeals of the Eighth Supreme Judicial District, within sixty days from the date of the service hereof, in the City of El Paso, County of El Paso, State of Texas, then and there to defend a writ of error sued out on the petition of L. H. Woodbury and Vincent Woodbury *are* plaintiffs in error, against The Galveston, Harrisburg and San Antonio Railway Company, defendant in error, filed in this court on the 1st day of April, 1918, for the revision and correction of a certain judgment rendered in this 41st district court on the 14th day of February, 1918, in a certain cause pending in said court, numbered 14633 on the docket of said court, wherein L. H. Woodbury and Vincent Woodbury are plaintiffs and the Galveston, Harrisburg & San Antonio Railway Company is defendant and described in said petition as follows, to-wit:

That heretofore, to-wit, on or about the 2d day of March, A. D. 1918, a judgment was rendered in this court for the sum of $100.00 and costs of suit in favor of the above named plaintiffs and against the defendant above named in a certain cause pending in this court, No. 14633 on the docket thereof; and that said judgment was in words as follows, to-wit:

"In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas, Fourteenth Day of February, A. D. 1918.

41 **L. H. Woodbury and Vincent Woodbury**

v.

Galveston, Harrisburg & San Antonio Railway Company.

This day in the above entitled and numbered cause wherein L. H. Woodbury and Vincent Woodbury, her husband, are plaintiffs, and the Galveston, Harrisburg & San Antonio Railway Company is defendant, came the parties by their attorneys and announced ready for trial, and thereupon came a jury of good and lawful men, to-wit, C. F. Eberle and 11 others who being duly empaneled and sworn and hearing the pleadings, evidence and argument of counsel, in response to the special issue submitted to them, returned the following verdict:

"We, the jury, find the value of the trunk and its contents to have been the sum of five hundred dollars.

(Signed) C. F. EBERLE.
Foreman."

And the court being of the opinion that the law is for the plaintiffs, it is therefore considered, ordered and adjudged by the court that the plaintiffs, L. H. Woodbury and Vincent Woodbury, her husband, do have and recover of the said defendant, the Galveston, Harrisburg and San Antonio Railway Company, the sum of $500.00 with interest thereon at 6 per cent per annum from the 14th day of March, 1917, together with their costs in this behalf expended and that they have their execution, to which action and ruling of the court, plaintiffs then and there in open court excepted.

P. B. PIERCE,
Judge of the Forty-first Judicial District of Texas, in and for the County of El Paso."

Plaintiffs aver such judgment should have been for the sum of $500.00.

Herein fail not, but of this writ make due return within ten
42 days from the date hereof, with your indorsement thereon, showing how you have executed the same.

Given under my hand and the seal of said court, at office in El Paso, this first day of April, 1918.

Attest:
C. M. McKINNEY,
Clerk District Court El Paso County, Texas.
By E. M. MONTES,
Deputy.

File No. 14283. Forty First District Court, El Paso County, Texas. L. H. Woodbury and Vincent Woodbury v. The Galveston, Harrisburg and San Antonio Railway Company. Citation in Error.

Issued the first day of April, 1918. C. M. McKinney, Clerk District Court El Paso County, Texas. By E. M. Montes, Deputy.

Sheriff's Return.

Came to hand the 1 day of April, 1918, at 5:30 o'clock P. M. and executed the 3d day of April, 1918, at 3:45 o'clock P. M. by delivering to the Galveston, Harrisburg & San Antonio Ry. Co., a corporation, by delivering to L. B. McDonald its superintendent. Returned — 19—.

SETH B. OLNHOUSE,
Sheriff El Paso County, Texas.
By J. D. NEWTON,
Deputy.

Fees.

Serving 1 copy	87½c.
Mileage 2 at 5c	10
Total	85

43 Filed the 11 day of April, 1918. C. M. McKinney, Dist. Clerk. By E. M. Harvey, Deputy.

THE STATE OF TEXAS

L. H. Woodruff, Plaintiff,

v.

G., H. and S. A. Ry. Co., Defendant.

To Officers of Court, Dr.

The costs accrued in the above entitled cause to adjournment of — Term, 191—.

Clerk's Fees.

Docketing Cause	$0.20
Filing paper, 30	4.50
Entering Appearances, 2	.20
Docketing Motions, 5	.25
2 Citations and 2 Copies	2.50
1 Precept to Serve Interrogations and Copy	1.25
2 Commissions to tak. Depositions	1.50
3 Certified Copies Interrogations	4.80
Swearing and Empaneling Jury	.25
Receiving and Recording Verdict	.25
Entering Sheriff's Return on Citation	.50
Approving 1 Bond	1.50
Entering 5 Orders	3.75
Judgment	1.00
Taxing Costs and Copy	.25
Transcript of Court of Appeals	18.60
Total Clerk's Fees	$42.10

Sheriff's Fees.

Executing Citations and Mileage	1.70
Serving Notice to take Deposition	.85
Jury Fee	.50
Total Sheriff's Fee	$3.05

Recapitulation.

Jury Fee	5.00
Stenographer's Fee	3.00
Notary's Fee—Deposition of L. H. Woodbury	3.00
Clerk's fees	12.10
Total Costs	$26.15

[SEAL.]

41 THE STATE OF TEXAS,
County of El Paso:

I hereby certify the above to be a correct account of the costs in the above entitled and numbered suit, up to this date.

Witness my hand and seal of said court, affixed at office in El Paso, Texas, this 17th day of May, 1918.

Attest:

C. M. McKINNEY,
Clerk District Court, El Paso County.
By E. M. MONTES,
Deputy.

Clerk's Certificate.

THE STATE OF TEXAS,
County of El Paso:

I, C. M. McKinney, Clerk of the District Court in and for El Paso County, Texas, Forty-first Judicial District, do hereby certify that the foregoing transcript of 31 pages contains a true and correct transcript of all papers filed and all proceedings had in cause No. 14076, wherein L. H. Woodbury and Mrs. L. H. Woodbury are plaintiffs and The Galveston, Harrisburg and San Antonio Railway Company is defendant, as the same appear on file and of record in my office, except original citation and return thereon, defendant's special charges Nos. 1 and 2, one special charge asked by plaintiff, defendant's motion to set aside findings of the jury and defendant's motion for a new trial.

Given under my hand and seal of the District Court of El
42 Paso County, Texas, at my office in the City of El Paso, Texas, this 17th day of May, A. D. 1918.

[SEAL.]

C. M. McKINNEY,
Clerk District Court in and for
El Paso County, Texas.
By E. M. MONTES,
Deputy.

Court of Civil Appeals, El Paso, Texas. Filed May 21st, A. D. 1918. J. I. Driscoll, Clerk.

In the District Court of El Paso County, Texas, Forty-first Judicial District.

No. 902.

L. H. Woodbury et al., Plaintiffs,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant.

Statement of Facts.

Be It Remembered that on the trial of the above entitled and numbered cause beginning the 14th day of February, 1918, and concluding on the same day, all the facts given in evidence were as follows:

The deposition of Mrs. L. H. Woodbury was read in evidence and the facts stated therein were and are:

My name is L. H. Woodbury, age 38, and I have resided in Timmins, Ontario, Canada, during the past three years. I am now at Loraine, Mitchell County, Texas, and have been during the past ten days.

I arrived in El Paso on the morning of March 15th at 2 o'clock a. m. I left El Paso on the night of April 9th at 6 o'clock p. m. My husband has not been in Texas since January 1st, 1917. I arrived in El Paso on a relief train sent out to meet the G.,
46 H. & S. A. train No. 9 that wrecked at Iser, Texas, on the evening of March 15, 1917. I boarded the G. H. & S. A. train No. 9 at San Antonio, Texas, about 9:30 on the evening of March 14, 1917. The train passed through Sabinal, Alpine, Ft. Hancock and Iser, all in the State of Texas. I had baggage at the time I left San Antonio. I had one trunk which I checked in the usual manner to El Paso, Texas. I received a check for such trunk, it being No. 919193 which I now present. I have handed the check 919193 to the notary and he has marked same Exhibit "A."

"Form 3943.

Standard
Local Check.

Duplicate.

Sunset Route.

From San Antonio
To El Paso
State
Series 1 919193."

(Reverse side of check reads.)

"Notice to Passengers.

To avoid payment of storage on baggage it should be claimed immediately on arrival at destination.

Single pieces weighing more than 250 pounds or of unusual size will not be accepted.

Unlocked receptacles will be accepted only at owner's risk for loss of contents.

Passengers should make memoranda of checks to facilitate tracing in case of loss.

47 Name of Owner .....
Delivered at .....;"
Street Address ....."

This was the check given to me for my trunk. I have a list showing the articles contained in the trunk. The value of such articles is shown in figures opposite each article. I know the value of the articles is represented by the figures by them having been purchased at such prices. I have delivered the list of items contained in the trunk to the notary and he has marked the same Exhibit "B."

List of Contents—Exhibit "B."

	1 Trunk	$25.00
	1 Silver Mesh Bag	25.00
	1 Pr. Gold & Pearl opera glasses	20.00
	1 Blue Serge Suit	52.00
	1 Pr. High Shoes	12.00
	1 Pr. Sport Shoes, White	7.00
	2 Prs. Evening Slippers	14.00
	1 Hat	25.00
	1 White Wool Sweater (Jeager)	10.00
	1 Brown Crepe de Chine Dress	35.00
	1 Blk. Pussy Willow Silk Dress	30.00
	1 Blk. Serge dress	22.00
	1 Green Serge Dress	18.00
	1 Pink Crepe de Chine Dress	20.00
	3 Suits of Underwear	15.00
	5 Pairs Stockings (Silk)	6.75
	3 Cotton Lingerie Slips	7.65
	1 Lavender Silk Slip	10.00
	1 Crepe de Chine Blouse	6.25
	1 Georgette Crepe Blouse	7.50
	1 Silk Blouse	6.50
	1 White Voile Blouse	5.00
48	2 Linen Blouses	5.00
	6 Linen Towels	7.35
	3 Japanese Table covers & napkins	10.00
	2 Crochet Sets and Yokes	3.25
	1 Piece Silk Dress Goods	5.00
	1 Piece Silk Voile Goods	4.65
	1 Gingham Dress	4.75
	3 Under Vests at $1.75 each	5.25
	1 Green Linen Suit	35.00
	3 House Dresses	10.00
	1 Sterling Silver Umbrella	15.00
	1 Boys' Overcoat	11.50
	1 White Serge Suit (De Pina's)	15.00
	1 Hat, Milan Straw	2.50
	1 Pr. Shoes	2.50
	1 Pr. Shoes	3.00
	3 Wash Suits $2.00, $2.50, $2.50	7.00
	3 Suits Woolen Underwear (Unions)	5.25
	3 Pr. Hose, 35c each	1.05
	3 Pr. Cotton Hose 25c	.75
	3 Pr. Overalls	3.75
	1 White Pique Suit	7.50
	5 Pairs Rompers	6.25
	1 Sweater	2.85
	3 Prs. Sleeping Garments	1.95
	Total	$555.75

Each of the items named in the list was packed in the trunk before it was checked and was in the trunk at the time I received such check. I packed them there myself. I have not seen the trunk since I received the baggage check for it. I made a demand for my trunk at the baggage room at El Paso, Texas. I have received correspondence from the G. H. & S. A. Railroad Company about the claim I made for the loss of the baggage. I have delivered such correspondence to the notary and he has marked the same Exhibit "C."

49 EXHIBIT "C."

"Southern Pacific Lines.

Houston, Texas, April 3, 1917.

Claim—Mrs. Vincent Woodbury.

Mrs. Vincent Woodbury,
3428 Montana St.,
El Paso, Texas.

DEAR MADAM:

Referring to your letter March 29 relative to loss of your trunk and contents by fire in wreck of our train 9 near Iser, Texas, March 15, covered by local check 919193, San Antonio to El Paso.

Investigation shows that your trunk was checked on interstate ticket Form SK 10, No. 711, which only allowed for $100.00 liability. We, therefore, tender you $100.00 in settlement of your claim in full for loss of your trunk. If this is satisfactory, kindly advise me at once and I will issue vouchers and forward to you promptly.

Yours truly,

R. L. McKIBBIN."

I received said correspondence from R. L. McKibbin, General Baggage Agent, Houston, Texas. The articles named in the list attached as Exhibit "B" and the trunk in which they were contained, were my property at the time I received the baggage check for the same at San Antonio, Texas. I do not believe that I could replace the articles listed in Exhibit "B" at the same price at which they are listed because the price has advanced since purchasing such articles.

I had a railroad ticket entitling me to transportation as a
50 passenger over defendant's railway from San Antonio to El Paso, Texas. I purchased each of the articles contained in the trunk named on the attached list, Exhibit "B," all of which were purchased within the last six months at Timmins, Ontario; Toronto, Ontario; San Francisco, California; Chicago, Illinois; Dallas, Texas; Taylor, Texas; San Antonio, Texas; Yoakum, Texas, from merchants at the above named towns. All articles were new at the time of the purchase and all articles named on Exhibit "B" were in the trunk at the time it was delivered to the G. H. & S. A. Railroad Company at San Antonio, Texas. I was traveling on a

coupon ticket but had stopped at San Antonio, Texas, and rechecked my baggage from San Antonio to El Paso on a local baggage check from San Antonio to El Paso, Texas, being local baggage check No. 919193, Exhibit "A" attached.

The following facts were introduced in evidence by plaintiff from a second deposition:

"I am now located in Timmins, Ontario, Canada, where I reside and am the plaintiff in this suit. I made no statement at the time I checked my baggage as to the value of it. I paid no additional charge for said baggage on account of the value thereof being in excess of $100.00. The ticket upon which I was traveling was from Timmins, Ontario, to El Paso, Texas and return. I did not purchase a local ticket and did not check baggage thereon. I was traveling on a through ticket purchased in Timmins, Ontario. The ticket was purchased January 25, 1917, from the Temiskaming & Northern Ontario Railroad Company at Timmins, Ontario and I rode upon said ticket from there to San Antonio and rode upon said ticket from San Antonio to El Paso. My baggage consisted of a trunk and its contents and the contents of the trunk
51 were not visible. I personally purchased the ticket providing for my transportation. I was not informed that a different kind of first class ticket could have been purchased. No railroad agent at any time, anywhere in connection with my transportation ever informed me that there was any condition concerning the liability of any railroad company in event my baggage was destroyed by such company.

The agent of the defendant at San Antonio who received my baggage did not inform me by word, writing or in any manner whatsoever that there was any limitation of liability on the part of the defendant in the event my trunk should be destroyed. Neither did such agent or any other agent ever inform me that by paying an additional rate there would be any change in the liability of the defendant. I had no knowledge whatsoever of rules or regulations to the effect that the defendant had limited its liability in any manner. There was no article in my trunk that was being carried for sale or speculation. The articles contained in my trunk were such as I would ordinarily carry as baggage in making a journey of the kind I was then making. I have traveled to considerable extent during the past ten years. The only time I have ever been required to unlock my trunk and show the baggage was at a port of entry. I have heard of this being done in connection with custom regulation. My trunk was burned in the baggage coach from lack of being thrown out in time. About five or six other trunks were saved by the passengers throwing them out themselves. The man in charge of the baggage coach was not injured and the coach was not opened sooner to remove the trunks as the officials on the train declared that it would not burn on account of being steel construction and the coach did not burn for about an hour after the wreck occurred. There was no apparent effort on the part of the defendant or its agents at the time I checked my trunk to inform me of any limita-

tion of liability. I positively knew of no such limitation.
52 The agent who received my trunk had the opportunity and could have informed me of such limitation, if there were any."

W. K. Jones, a witness for defendant, on direct examination, testified:

"I reside at San Antonio, Texas, and resided there on March 19, 1917. My occupation in March, 1917, and now is that of assistant baggage agent for the G. H. & S. A. Railway Company at San Antonio, Texas.

I checked the trunk represented by baggage check 919193 on March 14, 1917, from San Antonio to El Paso. There was no excess baggage. That (referring to sign) came from the baggage room at San Antonio. It was hung in a place where it could be seen by the public. It had been there about three or four years—three anyway. There was a similar notice hung in the depot over the ticket office in the waiting room."

The sign was introduced in evidence and was as follows, to-wit:

"Galveston, Harrisburg & San Antonio Railway Company.

Complete published files of this company's tariffs are located at
General Freight Office, Houston, Texas, (for freight).
General Passenger Office, Houston, Texas, (for passengers).
The rate and fare schedules applying from or at this station and indices of this company's tariffs are on file in this office and may be inspected by any person upon application, and without the assignment of any reason for such desire.
53 The agent, or other employee on duty in the office, will lend any assistance desired in securing information from or in interpreting such schedules.

J. R. CHRISTIAN,
General Freight Agent.
T. J. ANDERSON,
General Passenger Agent.
C. K. DUNLAP,
Traffic Manager.

Copy of regulations certified by the Secretary of the Interstate Commerce Commission was offered in evidence and was and is as follows:

"Supplement No. 8 to I. C. C. No. C-318.

(Cancelling Supplement No. 7.)

Texas & New Orleans Railroad Company

In connection with

The Galveston, Harrisburg & San Antonio Railway Company.

(PX 4—462.)

Houston & Texas Central Railroad.

(PX 4—No. 1.)

The Houston East & West Texas Railway Company.

(PX 4—No. 1.)

Houston & Shreveport Railroad Company.

(PX 4—No. 1.)

Lake Charles & Northern Railroad.

(PX 5—No. 1.)

Louisiana Western Railroad Company.

(PX 5—No. 1.)

Morgan's Louisiana & Texas Railroad and Steamship Company.

(PX 5—No. 1.)

Passenger Traffic Department.

Supplement No. 8.

54 Tariff "S"—No. 13.

(Cancelling Supplement No. 7.)

Interstate Joint Tariff

of

Excess Baggage Charges, Baggage Rules and Regulations, transportation of Corpses to Interstate Destinations, Charges for Excess Weight, Size and Valuation, Excess Baggage Permits and Charges for Extra Baggage Cars to the Pacific Coast.

Applying from Stations on

The Galveston, Harrisburg & San Antonio Railway.
Houston & Texas Central Railroad.
The Houston East & West Texas Railway.
Houston & Shreveport Railroad.
Lake Charles & Northern Railroad.
Louisiana Western Railroad Company.
Morgan's Louisiana & Texas Railroad and S. S. Co.
Texas & New Orleans Railroad.

To

Interstate Destinations in the United States, Canada and Mexico and from Stations in Louisiana on The Houston & Shreveport Railroad Company to Stations in Texas on the Houston East & West Texas Railway Company and vice versa.

This tariff does not cover Excess Baggage Charges or Baggage Rules and Regulations between points in the State of Texas nor between points in the State of Louisiana.

Issued July 25, 1916.

Effective September 1, 1916 (except as noted in individual items).

Baggage of Excess Value.

(*a*) These companies will not accept for transportation from any one passenger baggage that is declared to exceed $2,500.00 in value.

55 (*b*) Unless a greater sum is declared by the passenger and charges paid for increased valuation at time of delivery to carrier, the value of baggage, up to and including 150 pounds, belonging to or checked for an adult passenger shall be deemed and agreed to be not in excess of $100.00 and the value of the baggage up to and including 75 pounds, belonging to or check for a child traveling on a half ticket shall be deemed and agreed to be not in excess of $50.00, and the value of baggage of a weight exceeding such allowance of 150 pounds and 75 pounds, respectively, upon which charges are paid in accordance with Rule 11, prescribing rates for the transportation of baggage of excess weight, shall be deemed and agreed to be not in excess of 66 2/3 cents per pound.

(*c*) If the passenger at the time of checking baggage declares a value greater than $100.00 for the baggage of an adult or $50.00 for that of a child traveling on a half ticket, or in case the weight of the baggage exceeds that allowed under the tariff in connection with the transportation of a passenger, declares a value greater than 66 2/3 cents per pound there will be an additional charge at the rate of 10 cents for each $100.00 or fraction thereof, above such agreed maximum values. The minimum charge for increased valuation will be ten cents.

(*d*) Charges for declared excess valuation must be prepaid and in cash. Excess baggage coupons will not be accepted.

(c) Table of charges for excess valuation in Section 6, pages 12 and 13, is canceled and withdrawn. On and after December 31, 1914, excess valuation charges will be computed as per paragraphs (a), (b), (c) and (d) of this rule.

(f) This tariff does not cover the transportation of baggage when the journey is wholly within the State of Texas or wholly within the State of Louisiana."

56 Such schedule was on file in the office in San Antonio.

On cross-examination the witness testified

"I do not know whether the tariff which was used by the agent in Timmin, Canada, was subject to the rules that had been read. I know from the records in San Antonio that I checked the baggage. It was in my handwriting. This is the same kind of a check that is used by the railroad company in checking baggage from San Antonio to El Paso, Texas, where a regular ticket is purchased. It is a local baggage check from San Antonio to El Paso and is the only baggage check where there was no excess."

Agreement.

The parties to the above entitled and numbered cause through their attorneys of record, hereby agree that the above and foregoing ten pages of typewritten matter are a full and correct statement of all the facts given in evidence on the trial of such cause and that the same constitute the original statement of facts herein.

Witness our hands this the 1st day of April, A. D. 1918.

RUFUS B. DANIEL,
Attorney for Plaintiff.
BEALL, KEMP & NAGLE,
Attorneys for Defendant.

The above and foregoing ten pages of typewritten matter having been agreed to by the parties to the above entitled and numbered cause as the original statement of facts therein and having
57 been examined by me and found to be correct, is by me approved and signed as the original statement of facts therein.

This first day of April, A. D. 1918.

P. E. PRICE.
Judge of the Forty-first District Court,
El Paso County, Texas.

In the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, Sitting at El Paso, El Paso County, Texas.

No. 902.

L. H. Woodbury et al., Plaintiffs in Error,

v.

The Galveston, Harrisburg and San Antonio Railway Company, Defendants in Error.

Statement and Nature of the Result of the Suit.

This suit was brought by plaintiffs in error, Mrs. L. H. Woodbury and Vincent Woodbury, her husband, to recover from defendant in error the value of a trunk and its contents.

Plaintiff, Mrs. L. H. Woodbury, on March 14, 1917, became a lawful passenger on one of the defendant's trains in the City of San Antonio, Texas, coming thence to El Paso. Prior to taking passage she checked her trunk. Defendant's train on which she and her trunk were being transported, was wrecked at Iser, in El Paso County, Texas and about an hour after the wreck the baggage car containing her trunk was burned. She sued for $555.75, alleging that such sum was the value of the trunk and its contents.

At a trial of the case, the court instructed the jury to find the value of the trunk and its contents and their verdict was the
58 sum of $500.00, notwithstanding which the court entered judgment for plaintiff in the sum of $100.00, to which action of the court plaintiff excepted. (Tr. p. 9.) Plaintiff filed a motion to revise and correct judgment (Tr. pp. 10-12), which motion was on the first day of April, 1918, by the court overruled, to which action of the court plaintiff excepted (Tr. p. 12), whereupon plaintiff on said date filed four bills of exception (Tr. pp. 12-21), and six assignments of error (Tr. pp. 21-23), a petition for writ of error (Tr. pp. 24-26), also cost bond (Tr. p. 27), and on said date citation in error was issued and service regularly had. (Tr. pp. 28-30.) The judgment which plaintiff seeks to have revised was entered by the court of March 2, 1918. (Tr. p. 19, 3d line from bottom. Bill of Exceptions No. 4.)

First Assignment of Error.

(Second in Record.)

The special verdict of the jury was that the value of plaintiff's trunk and its contents was $500.00 which under Article 1986, is conclusive and the failure of the court to enter that certain judgment more fully described in plaintiff's Bill of Exception No. 4, hereby referred to and made a part hereof and tendered by plaintiff to the court under which plaintiff would have recovered the sum of $500.00 was error in that the same is contrary to Article No. 1980 of the Revised Statutes of the State of Texas.

59 First Proposition Under First Assignment of Error.

When it is shown that personal baggage of a passenger has been burned while in the custody of a common carrier and that the common carrier could have prevented the burning of such baggage and the jury finds the value of such baggage to be $500.00 it is error for the trial court to enter a judgment for $100.00 in plaintiff's favor.

Statement.

Plaintiff pleaded relation of passenger and common carrier, delivery of her trunk to defendant in San Antonio on March 14, 1917, checked from there to El Paso, and loss of trunk and its contents through negligence of defendant to her damage $555.75. (Tr. pp. 1-2.)

Defendant pleaded general denial, and by special answer averred that in no event should judgment be entered against it for more than $100.00 account of a limitation of its liability to that sum. (Tr. pp. 3-4.)

In her supplemental petition, Mrs. L. H. Woodbury alleged:

"Plaintiff further shows that such limitation was invalid, because defendant did negligently permit plaintiff's trunk to be burned, that is to say, plaintiff shows that there was a wreck of the train on which plaintiff was riding, and that the trunk was burned in the baggage coach from lack of being thrown out in time and that the defendant could have saved such trunk from being burned, and that the defendant and its agents and employees declared at the time, that the said trunk would not burn, that the coach in which it was
60 being carried was constructed of steel and that the same did not burn until about an hour after the wreck had occurred, and that the failure of defendant, its agents or employees was gross negligence, amounting to the willful destruction on the part of defendant of plaintiff's trunk and its contents; and that such gross negligence on the part of defendants was the proximate cause of the destruction of plaintiff's trunk and its contents. (Tr. pp. 6-7.)

Plaintiff testified that she boarded the G. H. & S. A. train No. 9 at San Antonio, Texas, on the evening of March 14, 1917, and that she arrived in El Paso on the morning of March 16th at 2 o'clock a. m. on a relief train sent out to meet the G. H. & S. A. train No. 9 that wrecked at Iser, Texas, on the evening of March 15, 1917. That she had one trunk which she checked in the usual manner and received check 919,193, the face of which contained the following words:

"Form 3943.
Duplicate. Standard Local Check.
Sunset Route.
From San Antonio
to El Paso.
States
Series
1. 9810,1014."

That this check was given to her for her trunk. That the various items contained in the trunk which were set out at length showing the value as to each item amounted to the sum of $555.75; that each of the items named in the list was packed in the trunk. That she had packed them there herself. (St. of F., pp. 1-4.)

61 That her trunk was burned in the baggage coach from lack of being thrown out in time. That the man in charge of the baggage coach was not injured and the coach was not opened sooner to remove the trunk as the officials on the train declared that it would not burn on account of being steel construction and the coach did not burn for about an hour after the wreck occurred. (St. of F., p. 7.)

The charge of the court and the issues submitted to the jury were as follows:

"The court submits for your finding, this issue: What do you find from a preponderance of the evidence, was the reasonable value of plaintiff's trunk and contents to plaintiff at the time of its loss and destruction?

P. E. PIERCE,
Judge."

To which the jury replied:

"We, the jury, find the value of the trunk and its contents to have been the sum of five hundred dollars.

C. F. EBERLE,
Foreman."

The court entered judgment in favor of the plaintiff in the sum of $100.00 (Tr. p. 9), to which action and ruling of the court, plaintiff then and there excepted.

Plaintiff tendered the court a judgment in plaintiff's favor in the sum of $500.00 which the court refused to sign as is shown in plaintiff's Bill of Exception No. 4 which reads as follows:

62 "In the District Court of El Paso County, Texas, *Forty-first* Judicial District.

No. 14625.

L. H. WOODBURY et al., Plaintiffs,

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Defendant.

Bill of Exceptions No. 4.

Be It Remembered that upon the trial of the above entitled and numbered cause on the 14th day of February, 1918, that after the jury had returned its verdict and the same had been received by the court, that the plaintiff then and there prepared and presented to the court for its approval and signature a judgment which was in words as follows, to-wit:

In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas, Fourteenth Day of Feb., A. D. 1918.

No. 14625.

L. H. WOODBURY & VINCENT WOODBURY

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

This day in the above entitled and numbered cause wherein L. H. Woodbury and Vincent Woodbury, her husband are plaintiffs, and the Galveston, Harrisburg & San Antonio Railway Company, is defendant, came the parties by their attorneys and announced ready for trial, and thereupon came a jury of good and lawful men, to-wit, C. F. Ederle and eleven others, who having duly been empanneled and sworn, and hearing the pleadings, evidence and argument of counsel in response to the special issue submitted to them returned the following verdict:

'We, the jury, find the value of the trunk and its contents to have been the sum of five hundred dollars.

(Signed) C. F. EDERLE,
Foreman.'

And the court being of the opinion that the law is for the plaintiffs, it is therefore, considered, ordered and adjudged by the court that the said plaintiffs, L. H. Woodbury and Vincent Woodbury, her husband, do have and recover of the said defendant, the
63 Galveston, Harrisburg & San Antonio Railway Company, the sum of $500.00 with interest thereon at 6 per cent per annum

from the 14th day of March, 1917, together with their costs in this behalf expended, and that they have their execution, to which action and ruling of the court defendant then and there in open court excepted.

Judge Forty-first Judicial District,
El Paso County, Texas.

And Be It Further Remembered, that the court failed to sign or approve the above and foregoing judgment but that thereafter, to wit, on the 2d day of March, A. D. 1918, and during the term of the court at which the trial was had, the court did make, file and instruct the clerk to enter a judgment in said cause which was in words as follows, to-wit:

In the District Court of El Paso County in and for the Forty-first Judicial District of the State of Texas. Fourteenth Day of Feb., A. D. 1918.

No. 14823.

L. H. Woodbury and Vincent Woodbury
v.
Galveston, Harrisburg & San Antonio Railway Company.

This day in the above entitled and numbered cause wherein L. H. Woodbury and Vincent Woodbury, her husband, are plaintiffs and the Galveston, Harrisburg & San Antonio Railway Company is defendant, came the parties by their attorneys and announced ready for trial, and thereupon came a jury of good and lawful men, to-wit, C. F. Edele and eleven others, who being duly empaneled and sworn, and hearing the pleadings, evidence and argument of counsel, in response to the special issue submitted to them, returned the following verdict:

"We, the jury, find the value of the trunk and its contents to have been the sum of five hundred dollars.

(Signed) C. F. EDELE,
Foreman."

64 And the court being of the opinion that the law is for the plaintiffs, it is therefore considered, ordered and adjudged by the court that the plaintiffs, L. H. Woodbury and Vincent Woodbury, her husband, do have and recover of the said defendant, the Galveston, Harrisburg and San Antonio Railway Company, the sum of $100.00 with interest thereon at 6 per cent — annum from the 13th day of March, 1917, together with their costs in this behalf expended, and that they have their execution, to which action and ruling of the court plaintiffs then and there in open court excepted.

T. B. POLK,
Judge of the Forty-first Judicial District of Texas, in and for the County of El Paso.

The foregoing Bill of Exceptions No. 4 having been reduced to writing by counsel for plaintiff and having been presented to the undersigned judge of said court for allowance and signature within thirty days from the adjournment of the term of said court at which said cause was tried and within the time required by law, and having been by me submitted to adverse counsel and found by him to be correct and having been by me found to be correct, is hereby allowed, approved and ordered filed by the clerk of this court as a part of the record in such cause, this first day of April, A. D. 1918.

P. R. PRICE,

Judge of the Forty-first Judicial District of Texas, in and for the County of El Paso.

(Endorsed:) No. 14693. In the 41st Judicial District Court El Paso Co., Tex. L. H. Woodbury v. G. H. & S. A. Ry. Co., Plaintiff's Bill of Exception No. 4. Filed this 1st day of April, A. D. 1918. C. M. McKinney, clerk District Court, El Paso Co., Texas. E. M. Montes, deputy." (Tr. pp. 18-21.)

65 Authority.

Art. 1990 Revised Statutes of the State of Texas.
Zeiger v. Woodson, 202 S. W. 163, 167.

Remarks.

The relation which existed between the plaintiff and defendant relative to the plaintiff's trunk and its contents was that of common carrier to passenger or insurer of the safe transportation of plaintiff's baggage and the uncontroverted and uncontradicted testimony of record is that the defendant could have prevented the loss of plaintiff's baggage, even after the wreck occurred, yet relying upon the fact that its coach was of steel construction it refused to throw her trunk out of the car. It is respectfully urged that under the common law as well as the statutes of this state that $500.00 the finding of fact as to damage suffered, was the sum for which the judgment should have been entered by the trial court.

Second Assignment of Error.

(First in Record.)

The court erred in refusing to pronounce judgment for plaintiff in the sum of $500.00.

(*a*) Because the jury found that the value of the plaintiff's trunk and its contents was $500.00.

(*b*) Because the contract upon which plaintiff was traveling was made in the Province of Ontario, Dominion of Canada and was subject to the laws of the Province of Ontario, which said laws
66 are in the absence of pleading and proof to the contrary the same as the laws of the State of Texas.

(*c*) Because the contract itself was not offered in evidence, nor was there any evidence offered tending to show that the contract upon which plaintiff was being transported did in any manner provide for limitation of liability in the event of the loss to plaintiff of her baggage.

First Proposition under Second Assignment of Error.

In a passenger action for the loss of baggage occurring in the State of Texas where the contract for transportation was made in a foreign country, but there was no evidence as to the law of such foreign country, the law of Texas governs.

Statement.

See statement and first assignment, pages 2-3, this brief, and in addition:

Defendant alleged in its answer that plaintiff had purchased a ticket upon which she and her trunk were being transported, at some point in Canada and over a route extending through various states of the United States into and through the State of Texas and that her transportation was interstate commerce and that it had complied with the laws relating thereto and the rules and regulations of the Interstate Commerce Commission and that in its tariff there was a provision that unless plaintiff had paid for a value in excess of $100.00, then in the event of the loss of her trunk she could not re-
67 cover more than that sum alleging that she had not paid any excess and prayed that plaintiff in no event recover more than $100.00 in the suit. (Tr. pp. 3-4 *b*.)

In Paragraph III of her first supplemental petition plaintiff excepted to the foregoing pleading of defendant because the facts alleged did not as a matter of law constitute or cause such transportation to come within the jurisdiction of the Interstate Commerce Commission or its tariffs, rules and regulations. (Tr. p. 5.) This special exception was overruled by the court, to which action of the court plaintiff excepted as is shown in Bill of Exceptions No. 3. (Tr. pp. 17-18.)

Plaintiff testified that she was traveling from Timmins, Ontario, (Canada), to El Paso, Texas, and return. That her ticket was purchased in Timmins, Ontario, on January 25, 1917, from the Temiskaming and Northern Ontario Railroad Company. (St. of F., p. 6.) The ticket itself was not offered in evidence nor did defendant plead nor prove any law of the Province of Ontario, Canada. The action of the court, judgment and exceptions are shown under Statement of Nature and Result of Suit, page 1, and under preceding assignment, pages 2 and 5 of this brief.

Authorities.

Mexican Nat. R. Co. v. Ware, 60 S. W. 343;
Temple v. Dodge, 33 S. W. 222;
Western Union v. Schoonmaker, 181 S. W. 253, 265;
68 Mendiola v. Gonzales, 185 S. W. 389, 390;
Drozinski v. Hamburg Amer. Line, 181 S. W. 1161, 1166.

Remarks.

In the case of Mexican National R. Co. v. Ware, supra, appellee sued appellant to recover the value of a trunk and its contents which was delivered to appellant in the City of Mexico, to be transported as baggage of appellee and wife to San Luis Potosi, and was lost, in which case the court said:

"The testimony establishes that appellee bought two tickets from the Galveston, Harrisburg & San Antonio Railway Company at San Antonio, Texas, appellant being a connecting line, for passage from that place to the City of Mexico and return, with stop-over privileges at other points in Mexico. The tickets contained a clause limiting the amount of recovery for wearing apparel to $100.00 for each ticket. * * * The contract as to baggage was made in Texas, where it is provided by statute that railroad companies and other common carriers shall not limit or restrict their liability. Sayles' Civ. St., Art. 320. * * * The provision in the tickets limiting the liability of this railroad company for lost wearing apparel was invalid. Railway Co. v. Maddox, 75 Tex. 300, 12 S. W. 815; Railway Co. v. Greathouse, 82 Tex. 104, 17 S. W. 834; Coward v. Railway Co. 16 Lea, 225. * * * It will be noted that the contract was not to be performed in Mexico but that it was a contract for carriage of the passenger and his baggage from a point in Texas to a point in Mexico and return to the initial point in Texas. The contract was not concluded in Mexico and was not wholly performed until the passenger, with his baggage had been returned to San Antonio, Texas. * * *
The contract of carriage was made between the initial carrier
69 and appellee in Texas, and the validity and effect of that contract must be determined by the laws of this state. Fonseca v. Steamship Co., 153 Mass. 553, 27 N. E. 665, 12 L. R. A. 340; Fairchild v. Railroad Co., 148 Pa. St. 527, 24 Atl. 79; Hazal v. Railway Co., 82 Iowa 477, 48 N. W. 926; Brockway v. Express Co., 168 Mass. 257, 47 N. E. 87, 50 N. E. 626; Dyke v. Railroad Co., 45 N. Y. 113; Palmer v. Railroad Co., 101 Cal. 187, 35 Pac. 630; Liverpool & G. W. Steam Co. v. Phenix Ins. Co., 129 U. S. 397, 9 Sup. Ct. 469, 32 L. Ed. 788; The Iowa (D. C.) 50 Fed. 561."

In the case of Western Union v. Schoonmaker, supra, 181 S. W. 253, at 265, Justice Walthall said:

"In the absence of pleadings and findings of such fact, we must presume the law of New Mexico to be the same as our own."

In the case of Mendiola v. Gonzales, 185 S. W. 389 at 390, Justice Fly said:

"There being no proof in this case, as to the law in Mexico, the presumption will be that it is the same as in Texas. Tempel v. Dodge, 89 Tex. 69, 32 S. W. 514, 33 S. W. 222; Railway v. Goodman, 20 Tex. Civ. App. 109, 48 S. W. 778."

In the case of Tempel v. Dodge, 33 S. W. 222, our Supreme Court, speaking through Justice Brown, said:

"It is well settled in this state that in the absence of proof, our courts will presume the law of another state to be the same as our own. James v. James, 81 Tex. 381, 16 S. W. 1087; Bradshaw v. Mayfield, 18 Tex. 30; Arman Diaz v. Serna, 40 Tex. 291; Crosby v. Huston, 1 Tex. 232."

70 From the foregoing authorities it is plain that under the decisions in this suit, the law of the Province of Ontario, Canada, is beyond question the law to be applied in this case and likewise under the decisions of the courts of this suit, when the defendants in this case failed to allege and prove that the law of Canada would permit them to limit their liability, they made themselves amenable to the law of Texas which prohibits a limitation of liability and therefore liable to this plaintiff for the value of her trunk which the jury has found to be the sum of $500.00.

In the case of Droziuski v. Hamburg-American Line, 181 S. W. 1164, supra, the Missouri court found that plaintiff had bought a ticket from defendant in Antwerp, Germany, providing for her transportation to St. Louis, in Missouri, which ticket limited a recovery to the sum of 100 marks or $25.00 in the event that plaintiff's baggage was lost. Plaintiff sued defendant for $1,129.35 for the loss of her baggage and the trial court instructed the jury that if they found in plaintiff's favor their verdict should be for the sum of $25.00. The Missouri court held that the giving of this instruction constituted reversible error (page 1166) and the syllabus of the case reads:

"In a passenger's action for loss of baggage where the contract of carriage as contained in her transportation was made in a foreign country but there was no evidence as to the law of such foreign country, the law of Missouri governs."

It is respectfully urged, based upon the foregoing authorities and the findings of fact made by the jury that this Honorable
71 Court should revise and correct the judgment of the trial court by entering judgment for the plaintiff in the sum of $500.00 together with their costs.

Third Assignment of Error.

(Fourth in Record.)

The Court erred in pronouncing judgment for only $100.00 instead of $500.00 in plaintiff's favor.

(a) Because such judgment implied that the transportation of plaintiff and her baggage to a limitation of liability in event of the loss of her baggage and because the contract upon which plaintiff and her baggage were being transported was not in evidence.

(b) Because the transportation of plaintiff and her baggage was not interstate commerce nor subject to the Act to Regulate Commerce nor subject to the jurisdiction of the Interstate Commerce Commission.

(c) Because the contract for the transportation of plaintiff was subject to the laws of the Province of Ontario, Canada, which laws are by our statutes the same as the laws of the State of Texas, and because such judgment implied that there was a valid limitation of liability and under the laws of the State of Texas a common carrier cannot limit its liability.

First Proposition Under Third Assignment of Error.

When a contract for transportation over the rails of a common carrier is made in a foreign country and such contract for transportation is begun and completed in a foreign country, then such transportation is not subject to the Act to Regulate Commerce.

72 Statement.

For the pleadings of the parties under this proposition see the statement under the first proposition under the second assignment of error, pages 2, 3, 4 and 5 of this brief.

The contract under which plaintiff and her trunk were being transported, that is to say the ticket, its purchase and sale were completed in Timmins, Ontario, Canada, on January 25, 1917. (St. of F. p. 6.) This contract provided for the transportation of Mrs. Woodbury from Timmins, Ontario, (Canada), to El Paso, Texas, and return to Timmins, Ontario (Canada). Plaintiff's testimony was in the form of two depositions, the first of which was taken after she had visited in El Paso and while she was in Loraine, Mitchell County, Texas, shortly after the wreck occurred. (St. of F., p. 1.) The second deposition was taken after she had returned to Timmins, Ontario, Canada. (St. of F., p. 6.)

Authorities.

U. S. v. Philadelphia & R. Ry. Co., 188 Fed. Rep. 484;
M. Canales v. Galveston, Harrisburg & San Antonio Rw. Co., 17 I. C. C. Rep. 573-574;
Seymour v. Morgan L. & T. R. R. & S. S. Co., 35 I. C. C. Rep. 192.

Argument.

In the case of U. S. v. P. & R. R. Co., supra, it appears that there was a cargo of sugar shipped from Hamburg, Germany, des-

73 tined to Philadelphia for transportation in bond to Raymond, Alberta, Canada. The Philadelphia & Reading Railway carried this shipment over a part of the route at a less rate than would have been lawful if the shipment had originated at Philadelphia, and it was the charging of this rate that was alleged by the United States to be a criminal offense. In that case the court held that the transportation had begun at Hamburg and had ended at Alberta and that the sugar was merely moved across the United States in its transit between two foreign countries and that the Elkins Act did not attempt to regulate such a transaction at all.

In the case of Canales v. G. H. & S. A. Ry., supra, a case in which your orator appeared for the plaintiff, there was a shipment of sugar from Piedras Negras, Mexico, through Eagle Pass, Texas destined to Agua Prieta, Mexico, and which was reconsigned at Eagle Pass to El Paso, the defendant waybilled the shipment in accordance with the terms of the original bill of lading to Douglas, Arizona, the point within the United States nearest to Agua Prieta, Mexico, and the shipment moved from Eagle Pass through El Paso, to Douglas and five months later was shipped back to El Paso through Hachita. Plaintiff prayed for reparation or a refund of all charges paid in excess of those which would have accrued for the transportation from Eagle Pass to El Paso if the shipment had moved in accordance with the shippers' instructions.

74 The Interstate Commerce Commission said:

"The overcharges in issue accrued within the United States on traffic moving from a point in Mexico to another point in Mexico. Such transportation is not embraced within the terms of the Act to Regulate Commerce. In U. S. v. P. & R. Ry. Co., 188 Fed. Rep. 484, it was held that the so-called Elkins Act is inapplicable to the continuous transportation of goods in bond from a foreign country through the United States to a foreign country. Following that case in Seymour v. M. L. & T. R. R. & S. S. Co., 35 I. C. C. 492, which involved alleged overcharges on shipments of sugar from Germany through New Orleans to Eagle Pass and El Paso, destined to points in Mexico, we said that—'the sugar was transported from a nonadjacent foreign country through the United States to destination in an adjacent foreign country.'"

Therefore it is plain that the transportation in this case cannot be governed by the Act to Regulate Commerce, nor rules of the Interstate Commerce Commission and in the absence of pleading and proof of the law of Ontario the laws of Texas must be our guide.

Fourth Assignment of Error.

(Third in Record.)

The court erred in admitting in evidence that tariff containing rules and regulations of defendant filed with the Interstate Commerce Commission, the same being more fully shown in plaintiff's Bill of Exception No. 2 hereby referred to and made a part hereof.

(a) Because the transportation of plaintiff was not interstate commerce nor subject to the Act to Regulate Commerce nor
75 subject to the jurisdiction of the Interstate Commerce Commission.

(b) Because the transportation of plaintiff's trunk and its contents was not interstate commerce, nor subject to the jurisdiction of the Interstate Commerce Commission.

(c) Because said tariff shows on its face that:

"This tariff does not cover excess baggage charges or baggage rules and regulations between points in the State of Texas."

(e) Because page 3, Sec. 1 (f) of said tariff reads:

"This tariff does not cover the transportation of baggage when the journey is wholly within the State of Texas or wholly within the State of Louisiana."

First Proposition Under Fourth Assignment of Error.

Evidence of rules and regulations of the Interstate Commerce Commission are wholly irrelevant, incompetent and immaterial and where a contract for transportation is begun and is finally completed in a foreign country then evidence of the rules and regulations of the Interstate Commerce Commission of the United States is wholly irrelevant, incompetent and immaterial.

Statement.

For copy of tariff quoted see St. of F., pp. 9-10. Plaintiff objected to introduction of same in evidence because it was irrelevant,
76 incompetent and immaterial and it had not been shown that plaintiff's transportation was interstate commerce. (Tr. pp. 14-17.)

Authorities.

U. S. v. Philadelphia & R. Ry. Co., 188 Fed. Rep. 484;
M. Canales v. Galveston, Harrisburg & San Antonio Rw. Co., 37 I. C. C. Rep. 573-574;
Seymour v. Morgan L. & T. R. R. & S. S. Co., 35 I. C. C. Rep. 492;
Mexican Nat. R. Co. v. Ware, 60 S. W. 343;
Tempel v. Dodge, 33 S. W. 222;
Western Union v. Schoonmaker, 181 S. W. 263-266;
Mendiola v. Gonzales, 185 S. W. 389, 390;
Drozinski v. Hamburg Amer. Line, 181 S. W. 1164, 1166.

Second Proposition Under Fourth Assignment of Error.

The admission in evidence of defendant's tariff was error for the reason that the tariff shows on its face that it applied to the transportation of baggage only from stations on its line to interstate destina-

tions in Canada, whereas plaintiff's baggage was checked from San Antonio, Texas, to El Paso, Texas, such tariff showing on its face that it did not cover excess baggage charges or baggage rules and regulations applying between points in the State of Texas.

Statement.

For the pleadings of the parties see statement under third assignment of error, page 10 of this brief. For remainder of state-
77 ment, same as under preceding proposition under this assignment.

Authorities.

Vernon Sayles' Tex. Civ. Stat. 1914, Vol. 3, p. 2343, Art. 3687, Rules 5 and 6.

Remarks.

Rule 5 cited above reads:

"Evidence must relate to facts in issue and to relevant facts."

Rule 6 reads:

"Facts are relevant when so connected with a fact in issue as to form part of the same transaction or subject-matter."

It must be remembered that the contract for transportation of plaintiff was not offered in evidence by the defendant. Such contract for transportation was in the hands of the defendant, however, because plaintiff had to surrender her ticket in order to obtain transportation. A tariff providing for the rules and regulations of the transportation of passengers and their baggage between points in England, or between points in France or between points in Old Mexico or between points in Australia should receive just as much consideration and are just as applicable and no more so than were the tariffs offered by the defendant in evidence and accepted by the court.

Plaintiffs in error respectfully pray that upon considera-
78 tion of this brief this Honorable Court reverse the judgment of the trial court and render judgment for them in the sum of $500.00 together with interest and costs of suit; but if judgment may not be rendered, then they submit that the case should be reversed and remanded.

RUFUS B. DANIEL,
Attorney for Plaintiffs in Error.

Court of Civil Appeals, El Paso, Texas. Filed June 12, 1918. J. I. Driscoll, Clerk.

In the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, at El Paso.

No. 902.

L. H. Woodbury et al., Plaintiffs in Error,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendant in Error.

Brief for Defendant in Error.

The statement of plaintiffs in error of the nature and result of the suit being incomplete, we desire to submit the following in addition to the statement of the nature and result of the suit as given by plaintiffs in error in their brief:

This suit was filed in the District Court of El Paso County, Texas, on April 10th, 1917, by Mrs. L. H. Woodbury, one of the plaintiffs in error, for five hundred and fifty-five and 75 100 ($555.75) dollars, the alleged value of her trunk and contents. (Tr. pp. 1 and 2.)

Defendant answered by general exception and specially ex-
79 cepted on the ground that plaintiff was a married woman, by general denial and affirmative plea that plaintiff at the time of the accrual of the cause of action and the institution of the suit was a married woman, and also specially alleged that if plaintiff's trunk and the contents thereof was lost or destroyed and same was not delivered to plaintiff, same occurred during the year 1917, to-wit, during the month of March, 1917, and plaintiff, Mrs. L. H. Woodbury, was traveling on an interstate or international ticket purchased by her during the year 1917, from some point in Canada, over a route extending through the various states of the United States into and through the State of Texas and that said trunk was checked from San Antonio, to El Paso, Texas, on said interstate or international ticket and was and is interstate commerce and that plaintiff was then and there traveling on said ticket as part of her trip which she was making from the Dominion of Canada through the various States of the Union, into and through the State of Texas, and that same was governed by the laws of the United States and the rules and regulations of the Interstate Commerce Commission and that at the time said ticket was purchased and at the time of checking said baggage the defendant had promulgated and filed with the Interstate Commerce Commission its tariffs, rates and schedules of transportation between different points on its lines and the amount of baggage to be checked on each ticket and the value of said baggage, and that under the terms of said tariffs, rates, etc., so filed with
the Interstate Commerce Commission and which had there-
80 tofore been approved by it and had been duly posted, it was specifically provided that the valuation of said baggage was limited to $100.00 unless a greater value was declared and paid for

by the passengers; and said answer further alleged that the plaintiff had not declared a greater value and had not paid for a greater value and had not paid any excess charges or any charge for excess baggage. (Tr. pp. 2 to 4b.)

Before announcing ready for trial, Vincent Woodbury, husband of L. H. Woodbury, made himself a party plaintiff. (Tr. p. 7.)

L. H. Woodbury testified by deposition and in her said deposition she testified that at the time she lost her baggage she was traveling on a coupon ticket but had a stop over at San Antonio and rechecked her baggage from San Antonio to El Paso; that she made no statement at the time of checking her baggage as to the value of it and paid no additional charge on said baggage on account of the value thereof being in excess of $100.00; that the ticket upon which she was traveling was from Timmons, Ontario, to El Paso, Texas, and return; that the ticket was purchased January 25, 1917, from the Temiskaming & Northern Railroad Company at Timmons, Ontario, and that she rode upon said ticket from there to San Antonio, Texas, and rode upon said Ticket from San Antonio, Texas, to El Paso, Texas. (S. F. p. 6.)

W. K. Jones, a witness for defendant, testified that he was
81 assistant baggage agent for the defendant at San Antonio, Texas; that he checked plaintiff's trunk, that there was no excess baggage; that a sign which was shown to him and introduced in evidence came from the baggage room in San Antonio, which sign was to the effect that rates, fares and schedules applying from said station might be inspected by any person upon application, etc. (S. F. p. 8.) A copy of the regulations applying to the Galveston, Harrisburg & San Antonio Railway Company and certain other railroads certified to by the Secretary of the Interstate Commerce Commission was offered in evidence, to the effect that unless a greater sum is declared by the passenger and charges paid for increased value at the time of delivery to the carrier, the value of the baggage up to and including 150 pounds belonging to or checked for an adult passenger shall be deemed and agreed to be not in excess of $100.00.

The witness Jones testified that this schedule was on file in the office in San Antonio, Texas. S. F. pp. 9 to 11.) See also defendant's Bill of Exception Number Two (Tr. pp. 14 to 17), showing that said schedule became effective September 1, 1916.

Upon a trial of said cause before a jury, the court submitted same upon special issues or, more correctly speaking, a special issue, only one issue being submitted to the jury, which was as follows:

"What do you find from a preponderance of the evidence was the reasonable value of plaintiff's trunk and contents to plaintiff at the time of its loss and destruction?"

82 To which the jury answered, $500.00. (Tr. p. 8.)

The trial of the case before a jury was had upon the 14th day of February, 1918, the jury returning its said verdict into court on said date. (Tr. p. 8.)

The term of court at which said case was tried, as shown by the

caption on transcript begun on the 7th day of January, 1918, and ended on the 2d day of March, 1918. The court rendered judgment in plaintiff's favor on the 2d day of March, 1918, to-wit, the last day of the January term of said court, in the sum of $100.00, together with interest thereon from March 14, 1917, at 6 per cent per annum and all costs of suit. (Tr. p. 9.)

Plaintiffs at the next term of court, to-wit, on April 1, 1918, filed a motion to amend and correct the judgment (Tr. pp. 10 to 12), which motion was on the 1st day of April, 1918, by the court overruled.

Plaintiffs filed their assignments of error in the trial court on the 1st day of April, 1918. (Tr. pp. 21 to 24.) The said transcript, as shown by certificate of the clerk of the district court on page 32 of the transcript contains all of the papers filed and all proceedings had in said cause except the original citation and the return thereon, defendant's special charges numbered one and two, and plaintiff's special charge number one, and defendant's motion to set aside the findings of the jury and defendant's motion for a new trial, which said papers are not included in the transcript.

83 First Counter Proposition Under First Assignment of Error.

The judgment of the court is not contrary to the findings of the jury, but is in conformity with the uncontroverted evidence in the case.

Statement.

As shown in the foregoing preliminary statement, the evidence showed that plaintiff, L. H. Woodbury, was traveling on an interstate or international ticket, had her baggage checked thereon; that she checked her baggage on said ticket from San Antonio, Texas, to El Paso, Texas, and at the time of checking same said plaintiff did not declare any value in excess of $100.00; that said baggage did not contain any excess baggage; that at the time of checking said baggage and long prior thereto defendant had filed with the Interstate Commerce Commission its schedule limiting its liability for lost baggage to $100.00 for 150 pounds of baggage unless a greater value was declared and paid for.

Authorities.

Boston, etc., R. Co. v. Hooker, 223 U. S. 97 (56 Lawyers' Edition, 868);
Hicks v. Armstrong, 142 S. W. 1195;
Mixon v. Wallis, 161 S. W. 1008.

Remarks.

The uncontroverted evidence showed that the plaintiff, L. H. Woodbury, at the time in question, was traveling on an inter-
84 state ticket and checked her trunk thereon from San Antonio to El Paso; that said trunk did not contain any excess bag-

gage and plaintiff did not declare any value greater than $100.00; that at the time of the purchase of said ticket and checking of said trunk defendant had filed with the Interstate Commerce Commission its schedule of rates, tariffs, etc., which specified that unless a greater value was declared and paid for a defendant railroad company would not be liable for baggage in excess of $100.00. If the court was going to assume defendant liable, and of this plaintiff in error cannot complain, it could in no event be liable in excess of $100.00 as shown by the uncontroverted evidence. Therefore, the only purpose in submitting the question of the value of the trunk and contents was that should the jury find such value less than $100.00, judgment could not be rendered against defendant for an amount in excess of the amount found by the jury to be the value of the trunk and contents, but if the value of the trunk and contents were found by the jury to be in excess of $100.00, then the limit of the judgment which the court could render against defendant under the uncontroverted evidence would be $100.00.

Second Counter Proposition Under First Assignment of Error.

Under the Second Cummins Amendment, approved August 8, 1916, it is provided by Act of Congress that the law prohibiting limitation of liability should not apply to baggage either on passenger trains or boats or trains or boats carrying baggage.

Authorities.

Act to Regulate Commerce, Revised January 1st, 1917, as issued by the United States Government Printing Office, page 46.

Defendant in error objects to the consideration of second, third and fourth assignments of error for the reason that the same are confused, multifarious and in violation of the rules of the Courts of Civil Appeals.

First Counter Proposition Under Second Assignment of Error.

Under the Interstate Commerce laws of the United States and especially under the second Cummins Amendment, the limitation of a common carrier for loss of baggage is controlled by the schedules filed with and approved by the Interstate Commerce Commission.

Statement.

For statement hereunder see preliminary statement in the foregoing pages of this brief.

Authorities.

Boston, etc., R. Co. v. Hooker, 233 U. S. 97 (58 Lawyers' Edition 868).

The Prezinski case, 181 S. W. R. 1164, decided by the St. Louis Court of Appeals, cited by plaintiffs in error in their brief, has no application to the case at bar. In that case the baggage apparently was not lost at any place in the United States. Evidently it did not reach the United States. It was not checked at any point in the United States. The defendant, so far as the evidence shows, never filed a schedule of tariffs with the Interstate Commerce Commission. The contract which defendant relied on to limit its liability was not signed by the plaintiff in said suit, was not understood by her and was in a foreign language which she could not read. But whatever may be the opinion by the courts of Missouri, this is a case in which we are bound by the opinions of the Supreme Court of the United States, which holds, as we submit, that the plaintiff in error is bound by the schedule filed with the Interstate Commerce Commission.

First Counter Proposition Under Third and Fourth Assignments of Error.

The shipment of the trunk in question is controlled by the Interstate Commerce laws of the United States.

Statement.

Plaintiff, L. H. Woodbury, purchased the ticket at Timmons, Ontario, on January 25, 1917; the same was a coupon ticket, from Timmons, Ontario, to San Antonio, Texas, El Paso, Texas and return. (S. F. p. 6.) It was not a case of purchasing a ticket from one point in Canada to another point in Canada through the United States.

Authorities.

T. & P. Ry. Co. v. Interstate Commerce Commission, 162 U. S. 212 (40th Lawyers' Edition, 945);
T. & N. O. Ry. Co. v. Sabine Tram Co., 227 U. S. 111 (57 Lawyers' Edition, 442).

Second Counter Proposition Under Third and Fourth Assignments of Error.

The shipment of the trunk in question being an interstate one, the laws of the United States regulating interstate commerce apply.

Statement.

For statement hereunder see statement under foregoing counter proposition.

Authorities.

Houston Navigation Co. v. Ins. Co., 89 Tex. 1;
State v. G. C. & S. F. Ry. Co., 14 S. W. 542;
State v. I. & G. N. Ry. Co., 71 S. W. 94;
G. C. & S. F. Co. v. Fort Gibson Co., 72 S. W. 119;
Cutting v. Florida Railway & Navigation Co., 46 Fed. Rep. 641;
Coe v. Errol, 116 U. S. 517;
Wabash Ry. Co. v. Illinois, 118 U. S. 557.

Remarks.

In the case of Texas & Pacific Railway Company v. Interstate Commerce Commission, above cited, Mr. Justice Shiras, speaking for the United States Supreme Court, says:

"Addressing ourselves to the express language of the statute, we find in its first section that the carriers that are declared to be subject to the act are those engaged in the transportation of passengers or property wholly by rail, or partly by rail and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment, from one
88 state or territory of the United States, or District of Columbia, or any place in the United States to an adjacent foreign country or from any place in the United States, through a foreign country to any other place in the United States, also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from some place to a less in trans-shipment or shipped from a foreign country to any place in the United States and carried to some place from the port of entry either to the United States or to an adjacent country.

It would be difficult to use language more indisputably signifying that Congress had in view the whole field of commerce except commerce wholly within the state, as well as that between the states and territories as those going to or coming from foreign countries."

In the Houston Navigation Company case, above cited, the facts show that certain cotton was shipped from Houston to Galveston, Texas, by the barge Katinka and was unloaded at the wharves at Galveston. The owners of the cotton lived in Liverpool, and by the agents of the owners the cotton was put in transportation by delivery to the navigation company to be carried by it to the City of Galveston, there to be delivered to the steamship line by which it was to be transported to New York, thence to Liverpool by steamer. The Supreme Court in passing upon the case judicially determined that the destination of the cotton at the time of delivery to the navigation company was fixed and determined; that the point of its final destination was Liverpool notwithstanding that the Houston Navigation Company gave a bill of lading to Galveston only, and notwithstanding that the shipment had originated at a point
89 in Texas. The navigation company did not give a through bill of lading to cover the entire route and the charges for

freight to Galveston for wharfage at that place were paid at the time the cotton was delivered. Notwithstanding this that court held that the shipment from Houston to Galveston was part of an interstate shipment.

In their opinion, on page 9 of the Reporter, the Supreme Court say:

"We conclude from the authorities and the facts in this case that the transportation of the cotton by the Direct Navigation Company from Houston to Galveston was interstate or foreign commerce and that its liability for the loss must be determined by the rules of law established by Congress, in so far as such rules have been prescribed, unless the provision of the charter, before quoted, operates to subject the corporation in the carriage of interstate commerce to the statutes of the state instead of the laws of Congress."

In the case of G. C. & S. F. Ry. Co. v. Fort Grain Company, 72 S. W., supra, Judge Fisher says:

"What we meant to say was, that if the purpose and intent in starting the shipment was that it should be transported from one state to another state, and such purpose was not abandoned, the shipment would be interstate, although there might be a temporary break in the transportation, with the view of transferring the shipment from the possession of one carrier to another, even though each carrier transported the same upon its own bill of lading."

And the same rule is laid down clearly in the Cutting v. Florida Ry. case, 46 Federal Reporter, supra.

90 We think there can be no doubt as to the correctness of the proposition that the movement of the trunk was such a one as to make the Federal law commonly known as the Interstate Commerce Law applicable. If this be true no error was committed by the trial court prejudicial to the plaintiff's rights, but on the contrary the trial court correctly construed the law in the case and the judgment should in all things be affirmed.

We respectfully submit that no error was committed prejudicial to plaintiffs in error and that the judgment of the trial court should be in all things affirmed.

BAKER, BOTTS, PARKER & GARWOOD,
Of Houston, Texas.

BEALL, KEMP & NAGLE,
Of El Paso, Texas.

Attorneys for Galveston, Harrisburg & San Antonio Railway Company, Defendant in Error.

Court of Civil Appeals, El Paso, Texas. Filed Aug. 24, 1918. J. I. Driscoll, Clerk.

Before the Court of Civil Appeals for the Eighth Supreme Judicial District of the State of Texas.

No. 902.

L. H. Woodbury et al., Plaintiffs in Error,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendants in Error.

Additional Authorities.

Plaintiffs in error respectfully show that since the filing of their brief, in the above entitled and numbered cause, the Interstate Commerce Commission has determined the application of the Cummins Amendment to the Act to Regulate Commerce, with respect
91 to transportation by railroads from points in the Dominion of Canada to points in the United States.

Now inasmuch as the defendants have founded their defense solely upon the Act to Regulate Commerce, the language of the Supreme Court of the United States wherein it has construed the value and importance of decisions of the Interstate Commerce Commission should, we think, be entitled to more than passing notice.

In New York, N. H. & H. R. Co. v. Interstate Commerce Commission, 200 U. S. 461, 50 L. Ed. 515, 26 Sup. Ct. 272, at 281, we find:

"We consider that the interpretation given by the commission in those cases, to the Act to Regulate Commerce is now binding, and, as restricted to the precise conditions which were passed on in the case referred to, must be applied to all strictly identical cases in the future; at least until Congress has legislated on the subject. We make this concession because we think we are constrained to do so, in consequence of the familiar rule that a construction made by the body charged with the enforcement of a statute, which construction has long obtained in practical execution, and has been impliedly sanctioned by the re-enactment of the statute without alteration in the particulars construed, when not plainly erroneous, must be treated as read into the statute."

The recent decision of the Interstate Commerce Commission is entitled In re Heated Car Service Regulations, I. & S. Docket 1155, decided July 25, 1918, and reported in 50 I. C. C. Rep. 620, in which an issue was raised as to the reasonableness of a rule published
92 in the carrier's tariff and having to do with the liability of the carriers for loss or damage to shipments of fruit from points in Canada, transported in cars warmed by artificial heat, and in its opinion the Interstate Commerce Commission said (at 623):

"Under all the circumstances of record, and in view of the fact that the so-called Cummins Amendment to the Act to Regulate Commerce does not relate to traffic moving from points in an adjacent foreign country to points in the United States, we are inclined to leave with the Canadian Commission the determination of the propriety of the proposed new tariff rule respecting the liability of the carriers for damages resulting from heat or cold to fruits and vegetables moving from interior Canadian points to interior points in the United States."

It may not be improper to copy a portion of the Cummins Amendment to illustrate the logic of the foregoing decision, and at the same time show its true intent and purpose, and for the convenience of this Honorable Court, and without changing its verbiage we will separate it by tabulation so as to get its true meaning:

"Any common carrier, railroad or transportation company, subject to the provisions of the Act, receiving property for transportation

From		To
A point in one State or Territory, or the District of Columbia	) ( )	(A point in another State, Territory, District of Columbia,

or

From		To
Any point in the United States	) ( )	(A point in an adjacent foreign country,

shall issue a receipt or bill of lading, etc."

93 In the case at bar, the facts show that Mrs. Woodbury purchased her ticket, or contract, at Timmins, Ontario, Canada, providing for her transportation via San Antonio to El Paso, Texas, and return; in other words her transportation was

From		To
A point in an adjacent foreign country	) ( )	(A point in the United States,

and as such is not covered by the Cummins Amendment to the Act to Regulate Commerce.

Her trunk was burned by the defendants in El Paso County, Texas, [illegible] hours before she had reached "a point in the United [illegible], El Paso, Texas. She was on the coming part of her [illegible] coming part. Her contract is governed by the laws of the [illegible] contract is made. The law of the Province of Ontario Canada, and the laws of the State of Texas are identical, letter for letter, until the defendant have proven them different, and the law of Texas is that the defendants cannot limit their liability.

Inasmuch as the statutes of Texas taken together with the authorities hereinbefore and in our original brief, clearly show our right to

the full amount of our claim, as was established by the jury, plaintiffs in error here and now urge that the prayer of our original brief be granted.

Respectfully submitted,

RUFUS B. DANIEL.
Attorney for Plaintiffs in Error.

94 Court of Civil Appeals, El Paso, Texas. Filed Dec. 7, 1918. J. I. Driscoll, Clerk.

Court of Civil Appeals, El Paso.

No. 902.

Mrs. L. H. WOODBURY et ux., Plaintiffs in Error,

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Defendants in Error.

Error to District Court of El Paso County.

Statement of Case.

On January 25, 1917, Mrs. Woodbury purchased from the Temiskaming & Northern Ontario Railroad Company at Timmins, in the Province of Ontario, Dominion of Canada, a coupon ticket good for transportation from Timmins to El Paso, Texas, and return. At San Antonio, Texas, she boarded a train of appellee for passage to El Paso, traveling upon said ticket. At San Antonio she checked her trunk to El Paso and it was transported upon the same train as that upon which she was traveling. The baggage master at San Antonio issued to her an ordinary baggage check for the trunk. It contained no limitation of liability. The baggage was checked and transported free of charge upon the ticket Mrs. Woodbury was traveling upon. The ticket was not offered in evidence and the record is silent as to whether or not it contained any limitation of liability. The train carrying Mrs. Woodbury and her trunk was wrecked between San Antonio and El Paso and the trunk was destroyed by fire originating from the wreck.

95 She brought this suit against appellee to recover the sum of $555.75, the alleged value of the trunk and its contents.

The following special plea was interposed by defendant:

"Further answering, defendant says that if plaintiff's trunk and contents were lost or destroyed or not delivered to plaintiff that the same occurred during the year 1917, to-wit, during the month of March, 1917, and that at the time the plaintiff, L. H. Woodbury, was traveling on an interstate or international ticket, purchased by her during the year 1917, from some point in Canada and over a route extending through the various states of the United States into and

through the State of Texas, and that said trunk and baggage was checked from San Antonio, Texas, to El Paso, Texas, on said interstate or international ticket was and is interstate commerce, and the said plaintiff was then and there traveling on said ticket as a part of her trip which she was then and there making from the Dominion of Canada through the various states of the Union, into and through the State of Texas, and was and is governed by the laws of the United States and the rules and regulations of Interstate Commerce Commission, and the said ticket was purchased during the year 1917, and that at the time of the purchase of said ticket and at the time of checking of said baggage, the defendant, G. H. & S. A. Ry. Co., had duly promulgated and filed with the Interstate Commerce Commission its tariffs, rates, fares and charges for transportation between different points on its lines, and of the amount of baggage checked on each ticket and of the value of said baggage and that under the terms of said tariffs, rates and charges so filed with the Interstate Commerce Commission and which had theretofore been approved by the Interstate Commerce Commission and were then and there in force, and had been duly
96 posted, it was specially provided that the valuation of said baggage was limited to the sum of one hundred ($100.00) dollars, unless a greater value was declared and paid for by the passenger and that said tariffs, rates and schedules contained provisions limiting the free transportation of baggage on the lines of the defendant company between San Antonio and El Paso and elsewhere, to certain weight and the liability of the defendant company to $100.00 and which tariffs, rates and schedules had a table of charges for excess weights and of excess values, which specially provided that for excess values in excess of $100.00, or fractional part thereof, an additional or special charge would be made, and defendant alleges that the said tariffs, rates and schedules were then and there in full force and effect and that plaintiff did not declare a greater value than $100.00 and did not pay for any excess value over and above $100.00.

Plaintiff alleges that amongst other things, the said tariffs provided as follows: * * * (Here is quoted regulations filed with the Interstate Commerce Commission hereinafter shown.) * * *

And defendant alleges that the plaintiff did not, when she checked said baggage or at any time declare the value of the baggage so checked to be in excess of $100.00 and did not pay for any weight in excess of 150 pounds, or for any value in excess of $100.00."

Upon the trial, appellee proved the promulgation and filing with the Interstate Commerce Commission of its tariffs, rates, etc., as alleged and its approval by the commission. It was shown that a copy thereof was on file in the San Antonio office of defendant. It was also shown that there was hung in the depot waiting room at San Antonio over the ticket office, and also in the baggage room, a sign which reads:

97 "Galveston, Harrisburg & San Antonio Railway Company.

Complete published files of this company's tariffs are located at General Freight Office, Houston, Texas (for freight).
General Passenger Office, Houston, Texas (for passengers).
The rate and fare schedules applying from or at this station and indices of this company's tariffs are on file in this office and may be inspected by any person upon application, and without the assignment of any reason for such desire.
The Agent, or other employee on duty in the office will render any assistance desired in securing information or making reference to such schedules.

J. R. CHRISTIAN,
General Freight Agent.
T. J. ANDERSON,
General Passenger Agent.
C. K. DUNLAP,
Traffic Manager."

Mrs. Woodbury made no declaration to appellee of any increased valuation of the trunk and paid no additional charges in that connection; it appearing that the trunk was checked and transported upon the ticket purchased by Mrs. Woodbury as aforesaid. Mrs. Woodbury had no actual knowledge of the matter relied upon by defendant as limiting its liability for loss of baggage. No agent of defendant informed her at the time she checked her baggage of any limitation of liability if the same was lost.

The case was tried before a jury and submitted upon one special issue, viz., What was the reasonable value of the trunk and its contents at the time of its loss?" This was answered: "$700.00."

98 Upon this answer the court entered judgment in plaintiff's favor for $100.00, from which she appeals, assigning as error the failure to enter judgment for the full value of the trunk and its contents as found by the jury. The correctness of the court's action in this matter is the question presented for review.

Opinion.

It is the contention of appellant that since the contract of carriage was made in Canada, her rights are governed by the law of that Dominion; and since the record is silent as to the law of Canada, it will be presumed to be the same as the law of Texas under which a common carrier is not permitted to limit its common law liability.

On the other hand, appellee contends that the Act of Congress regulating common carriers of interstate and foreign commerce, especially the so-called "Cummins Amendment" (Act of August 9, 1916), is applicable, and under this law the limitation of liability is valid and binding upon Mrs. Woodbury. Since the record is silent as to the law of Canada, it will be presumed to be the same as that of the Forum. Mrs. Woodbury is seeking to enforce her rights in

the courts of Texas. If the facts show that the contract between the parties is governed by the Acts of Congress, then it would be the duty of the courts of Texas to enforce those acts. And if the Acts of Congress are applicable, then it would seem the correct judg-
99 ment and rendered by the court below. Boston & Maine Railroad Co. v. Rooker, 233 U. S., 97; 58 L. Ed. 869.

The entire commerce of the United States foreign and interstate, is subject to the provisions of the Act of Congress. Texas & Pacific Ry. Co. v. Interstate Commerce Commission, 162 U. S. 197; 40 L. Ed. 940. The case just cited and Texas & New Orleans Ry. Co. et al., v. Sabine Tram. Co., 227 U. S. 111; 57 L. Ed. 442, are relied upon by appellee as bringing the shipment of the trunk within the provisions of the Interstate Commerce Law.

In the Texas & Pacific Railway Company case, the court considered the validity of a regulation by the Interstate Commerce Commission of rates to be charged in the United States for freight originating in a foreign country and transported upon through bill of lading to a point in the United States. While the particular regulation was not upheld, the power to regulate the rate was sustained.

In the Texas & New Orleans Railway Company case, it was held that a shipment destined by the purchaser for export, made by the seller under a local bill of lading from an interior point in Texas to a Texas gulf port, at which the lumber was unloaded without delay by the purchaser's order into slips or docks in reach of ship's tackle and was then loaded into chartered ships by which it was carried to a foreign port—such shipment not being an isolated one but typical
of many others—constitutes foreign commerce, and as such,
100 was governed by the tariffs on file with the Interstate Commerce Commission, to the exclusion of the rights established by the State Railroad Commission, although the seller had no connection with the lumber after it reached the railway terminus and had no concern with its destination after it came into the hands of the purchaser, and no knowledge thereof, and although the lumber had no definite foreign destination at the time of the initial shipment.

These cases are not regarded as in point. In the first case, the freight originated in a foreign country and was transported upon through bill of lading to a point in the United States. In the second case, the freight originated and was shipped from an interior point in the United States to a foreign country. Mrs. Woodbury's contract was not of that nature. The contract was made at Timmins, in Canada, and called for transportation from such point in Canada to a point within the United States and return to the point in Canada. The trunk in question was being transported upon this ticket and was lost upon one stage of the journey in the United States. An inspection of the "Cummins Amendment" approved August 9, 1916, will disclose that it in nowise relates to a contract made in a foreign country for transportation over the rails of common carriers, when such contract is to be begun and completed in such foreign country. In this connection, see recent decision of the Interstate Commerce Commission in re: Heated Car Service Regu-

lations, I. & S. Docket No. 1155, decided July 25, 1918, reported in 50 I. C. C. Rep. 629.

101 Neither do we think that the contract in question falls within the provisions of Section 1 of the original act to regulate commerce and its amendments—Par. 8563 U. S. Compiled Statutes, 1918. This conclusion we think, is supported by holdings to which we will now advert.

In the case of U. S. v. Philadelphia & Reading Ry. Co., 188 Fed. Rep. 488, it appears a cargo of sugar was shipped from Hamburg, Germany, destined to Philadelphia for transportation in bond to Raymond, in the Province of Alberta, Dominion of Canada. The Philadelphia & Reading Railway Company carried this shipment over a part of the route within the United States at a less rate than would have been lawful if the shipment had originated at Philadelphia. The charging of this rate was alleged by the United States to be a criminal offense. The court held that the Act of Congress concerning interstate commerce did not apply to a cargo shipped from Hamburg, Germany, destined as stated in the bill of lading to Philadelphia, for transportation in bond to Alberta, Canada, and taken to its destination by continuous and uninterrupted transportation, at the hands of successive carriers, there being no delivery or change of title, but the different carriers merely assisting in a continuous transportation from one foreign country to another.

In the matter of Canales v. G. H. & S. A. Ry. Co., 37 I. C. C. Rep. 573, there was a shipment of sugar from Piedras Negras, Mexico, through Eagle Pass, Texas, destined to Agua Prieta,

102 Mexico, and which was reconsigned at Eagle Pass to El Paso. The defendant way-billed the shipment in accordance with the terms of the original bill of lading to Douglas, Arizona—the point within the United States nearest to Agua Prieta, Mexico,—and the shipment moved from Eagle Pass, through El Paso, Texas, to Douglas, and five months later was shipped back to El Paso, through Hachita. Canales sought a refund of all charges paid in excess of those which would have accrued for the transportation from Eagle Pass to El Paso if the shipment had moved in accordance with the shipper's instructions. The Interstate Commerce Commission, in passing upon the application, said:

"The overcharges in issue accrued within the United States on traffic moving from a point in Mexico to another point in Mexico. Such transportation is not embraced within the terms of the Act to Regulate Commerce. In U. S. v. P. & R. Ry. Co., 188 Fed. Rep. 484, it was held that the so-called Elkins Act is inapplicable to the continuous transportation of goods in bond from a foreign country through the United States to a foreign country. Following that case in Seymour v. M. L. & T. R. R. & S. S. Co., 35 I. C. C. 492, which involved alleged overcharges on shipments of sugar from Germany through New Orleans to Eagle Pass and El Paso, destined to points in Mexico, we said that—'the sugar was transported from a nonadjacent foreign country through the United States to destination in an adjacent foreign country.'"

Now, as shown by the facts in this case, Mrs. Woodbury was traveling upon a ticket purchased in Canada which called for transportation from a point in Canada to a point in the United States
103 and return. She was traveling upon that contract and her trunk was being transported by virtue thereof, when the trunk was lost in the United States by one of the carriers engaged in performing the contract. The contract called for transportation from a point in Canada through the United States and back to the point in Canada. Upon the two authorities last cited, it seems that the Act of Congress regulating commerce does not apply to the transportation in question. This being true, the courts of Texas must apply the law of Texas. Under the law of this state, the attempted limitation of liability by a railroad company for lost baggage is invalid. Mexican & National Railroad Co. v. Ware, 60 S. W. 343; Ry. Co. v. Maddox, 75 Tex. 500; Ry. Co. v. Greathouse, 82 Tex. 104.

We are therefore of the opinion that the court below erred in limiting appellant's recovery to $100.00. The judgment of that court is reversed and here rendered in favor of appellant for the sum of $500.00.

E. F. HIGGINS,
Associate Justice, Court of Civil Appeals, El Paso, Texas.

Filed February 6, A. D. 1919. J. I. Driscoll, Clerk.

Judgment of the Court of Civil Appeals.

No. 902.

February 6, A. D. 1919.

L. H. Woodbury et al., Plaintiffs in Error,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendants in Error.

104 *Writ of Error to the District Court of El Paso County, Texas.*

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this court that there was error in the judgment, it is therefore considered, adjudged and ordered that the judgment of the court be reversed, and this court proceeded to render such judgment as should have been rendered by the court below, to-wit:

It is therefore considered, adjudged and ordered that the said plaintiffs, L. H. Woodbury and Vincent Woodbury, her husband, do have and recover of and from the said defendant, the Galveston, Harrisburg & San Antonio Railway Company, the sum of five hundred ($500.00) dollars with interest thereon at 6 per cent per annum from the 14th day of March, 1917, together with all costs in this

behalf expended and incurred, in this court and in the court below, for all of which let execution issue, and this decision be certified below for observance.

Minute Book Volume Two, at page 430.

In the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, at El Paso.

No. 902.

L. H. Woodbury and Vincent Woodbury, Plaintiffs in Error,

v.

Galveston, Harrisburg & San Antonio Railway Company, Defendants in Error.

Motion for Rehearing.

Now comes the defendant in error, Galveston, Harrisburg
105 & San Antonio Railway Company, in the above-styled and numbered cause, and moves the court to set aside the judgment heretofore rendered in this cause, reversing and rendering the judgment of the court below, and to grant it a rehearing and affirm the judgment of the court below, for the following reasons, to-wit:

First.

The court erred in holding that the Act of Congress regulating commerce between the states did not apply to the transportation of the trunk and baggage belong to Mrs. Woodbury, and erred in holding that Mrs. Woodbury was not herself an interstate passenger in traveling as she did.

Second.

The court erred in holding that the Act of Congress regulating commerce does not apply so far as the limitation of liability by the railroad company for lost baggage is concerned.

Third.

This court erred in holding that under the law of Texas the attempted limitation of liability by the defendant in error for lost baggage which plaintiff in error, Mrs. Woodbury, claims to have lost, is invalid because the law of Texas does not apply.

Fourth.

This court erred in holding that even though the law of Texas does apply, that the limitation of liability by the defendant in
106 error for the lost baggage is invalid because under the law of Texas, the said limitation is valid and enforcible.

Fifth.

This court erred in holding that Mrs. Woodbury while traveling upon a ticket purchased in Canada, which called for transportation from a point in Canada to a point in the United States and return, was not engaged in interstate commerce, and was not an interstate passenger, and that her baggage carried by the defendant in error, by virtue of said ticket was not being transported in interstate commerce.

Sixth.

This court erred in rendering judgment against defendant in error for the sum of five hundred ($500.00) dollars, because there is no evidence in the record to support said judgment and because the defendant's liability was limited to one hundred ($100.00) dollars, and because the baggage, if lost, was being transported in interstate commerce, and the liability of defendant in error was limited to one hundred ($100.00) dollars, and plaintiff in error could recover no greater sum.

Seventh.

The court of civil appeals erred in its judgment reversing and rendering this case in holding that the Act of Congress known as the Cummins Amendment (Act of August 9, 1916), is inapplicable to this case in which a contract was made in Timmins, Canada, calling for transportation from some point in Canada to El Paso,
167 Texas, in the United States of America, and return, and upon which transportation the plaintiff's trunk was checked as baggage from San Antonio to El Paso, Texas.

Eighth.

The court of civil appeals erred in holding that the Cummins Amendment, approved August 9, 1916, was not applicable to this case in that the same did not cover a case in which plaintiff purchased a round trip ticket from Timmins, Ontario, to El Paso, Texas, and return, and upon which round trip transportation she checked her baggage from San Antonio to El Paso, Texas, the said holding being under the pleadings and evidence in this case against the validity of an Act of Congress of the United States in which the validity of such act is drawn in question.

Statement.

Defendant in error pleaded that during March, 1917, the plaintiff was traveling on an interstate or international ticket purchased by her during the year 1917, from some point in Canada over a route extending through the various states of the United States into and through the State of Texas, and that said trunk was checked from San Antonio to El Paso, Texas, on said interstate or international ticket and was and is interstate commerce and that the same was

governed by the laws of the United States and the rules and regulations of interstate commerce commission and that at the time said ticket was purchased and at the time of checking said baggage defendant had promulgated and filed with the Interstate Commerce Commission its tariffs, rates and schedules of transportation between different points on its lines and the amount of baggage to be checked on each ticket and the value of said baggage, and that under the terms of said tariffs which had been approved by said Interstate Commerce Commission it is provided that the valuation of said baggage was limited to one hundred ($100.00) dollars, unless a greater value was declared and paid for by the passenger, etc. (Tr. pp. 2-4b.)

Plaintiff testified that at the time she lost her baggage she was traveling on a coupon ticket purchased January 25, 1917, at Timmins, Ontario, and that she rode upon said ticket from there to San Antonio, Texas, and rode upon said ticket from San Antonio, Texas, to El Paso, Texas. (S. F. p. 6.)

See also statement on pages 2, 3, 4 and 5 of defendant in error's brief.

Ninth.

This court of civil appeals erred in holding that the contract in question did not fall within the provisions of Section 1 of the original act regulating commerce and its amendments—Paragraph 8563, United States Compiled Statutes, 1918.

Tenth.

The court of civil appeals erred in holding that the original Interstate Commerce Act as set forth in Article 8563 of the United States Compiled Statutes of 1918 thereof did not govern this case, the said holding being against the validity of a statute of the United States in a suit in which the validity of such statute was drawn in question.

Eleventh.

The court of civil appeals erred in holding that in a case in which the plaintiff was traveling on a ticket bought at Timmins, Ontario, to El Paso, Texas, and return and upon which plaintiff traveled from Timmins, Ontario, to San Antonio, Texas, and thence from San Antonio, Texas, to El Paso, Texas, in which her trunk checked on said ticket from San Antonio, Texas, to El Paso, Texas, was lost, the laws of Texas would apply, the said holding being in a case in which the validity of a statute or authority exercised under any state was drawn in question on the ground of same being repugnant to the laws of the United States and in which the decision of the court of civil appeals is in favor of the validity of such state statute or authority.

Twelfth.

The court of civil appeals erred in holding that the law of congress was not applicable to the facts in this case and in rendering judgment

against this defendant for $200.00, notwithstanding the uncontroverted evidence showed that under the Act of Congress the defendant was only liable for $100.00, the said holding being violative of the fifth amendment to the Constitution of the United States in that it deprived this defendant in error, who was defendant in the court below, of property without due process of law.

110 Thirteenth.

The court of civil appeals erred in rendering judgment against the defendant in error, Galveston, Harrisburg & San Antonio Railway Company, for $200.00, said holding being violative of the Fourteenth Amendment to the Constitution of the United States in that it deprived this defendant in error of its property without due process of law.

Remarks.

We submit that either this case comes under the Interstate Commerce Act, as it existed prior to the passage of the second Carmack Amendment and as construed by the case of Boston, Etc., R. R. Co. v. Hooker, 233 U. S. 97, or it comes under the second Carmack Amendment, under either of which an interstate carrier was permitted to limit its responsibility for baggage of a passenger.

We respectfully submit that the holding of the court of civil appeals in this case is one in which the validity of the statutes of the United States is drawn in question and the holding of this court is against the validity of such statute or statutes of the United States and is in favor of the validity of the laws, statutes and authorities of the State of Texas, which said statutes, laws and authorities of the State of Texas, in so far as the facts in this case are concerned are in contravention of the laws and statutes of the United States.

111 Defendant in error represents that Rufus P. Daniel, whose residence and postoffice address is El Paso, Texas, is attorney of record for the plaintiffs in error.

Wherefore, defendant in error prays that notice according to law be given of this application for re-hearing and that on re-hearing hereof the judgment heretofore rendered in this cause on February 6, 1918, reversing and rendering this cause, be set aside and a re-hearing granted, and that upon such re-hearing the judgment of the trial court be in all things affirmed and that further proceedings be had herein as prayed for in the brief of defendant in error.

BAKER, BOTTS, PARKER & GARWOOD,
of Houston, Texas.

AND

BEALL, KEMP & NAGLE,
of El Paso, Texas.
Attorneys for Defendant in Error,
Galveston, Harrisburg & San Antonio Railway Company.

El Paso, Texas, February 17, 1919.

I, Rufus B. Daniel, attorney of record for Mrs. L. H. Woodbury and Vincent Woodbury, plaintiffs in error, hereby acknowledge receipt of a true copy of the foregoing motion for rehearing, and I hereby waive issuance and service on me of a certified copy hereof and agree that after the expiration of five (5) days from
112 date of filing hereof in the court of civil appeals said court may proceed to the hearing of said motion without further formality.

RUFUS B. DANIEL,
Attorney for Plaintiffs in Error, Mrs. L. H. Woodbury & Vincent Woodbury.

Court of Civil Appeals, El Paso, Texas. Filed February 17, 1919. J. J. Driscoll, Clerk.

Order of the Court of Civil Appeals Overruling the Motion of the Defendant in Error for a Rehearing.

No. 902.

L. H. WOODBURY et al., Plaintiffs in Error,

vs.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Defendant in Error.

Writ of Error to the District Court of El Paso County, Texas.

On this day coming on to be heard the motion of the defendant in error for a rehearing, and the court having considered the same, is of the opinion that the same should be overruled.

Wherefore, it is considered, adjudged and ordered that the motion of the defendant in error for a rehearing be, and the same is hereby in all things overruled.

Minute Book, Vol. Two, at page 148.

The court of Civil Appeals in and for the Eighth Supreme Judicial District of the State of Texas, at El Paso.

No. 902.

L. H. WOODBURY et al., Plaintiffs in Error,

vs.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Defendant in Error.

113 *Certificate of Transcript.*

I, J. J. Driscoll, Clerk of the Court of Civil Appeals of the Eighth Supreme Judicial District of the State of Texas, hereby certify the

foregoing transcript, consisting of 112 pages constitutes a full, true and correct copy of the proceedings had and orders entered in the above entitled cause, as set forth therein, as the same appear on file and of record in this office.

The foregoing constitutes the entire transcript in the cause, with the exception of the original Assignments of Error and Supersedeas Bond hereto attached.

Witness my hand and the official seal of said court, this the 21st day of April, A. D. 1919. J. I. DRISCOLL,
Clerk.

[Seal Court of Civil Appeals.]

114 *Cost Bill Court of Civil Appeals.*

Filing briefs	$ .80
Filing Record	.50
Docketing Cause	.50
Appearances	1.00
Filing Motion for Rehearing	.35
Orders	2.00
Notices	4.50
Papers filed	2.00
Judgment	1.00
Filing Opinion	.10
Taxing costs	.50
Certified Copy Bill of Costs	1.00
Certificate and seal	.50
Mandate	1.50
Recording Opinion	5.00
Certified Copy Opinion	3.50
Transcript from District Court	18.60
Express	1.95
Preparing and supervising printing record to U. S. Sup. Ct. and 20 copies	135.40
	$180.70

THE STATE OF TEXAS:

I, J. I. Driscoll, Clerk of the Court of Civil Appeals of Texas, do hereby certify that the above and foregoing Bill of Costs for the sum of One Hunded Eighty and 70/100 Dollars is true and correct.

Given under my hand and seal of office this 21st day of April, A. D. 1919. J. I. DRISCOLL,
Clerk.

115 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the Eighth Supreme Judicial District of the State of Texas, Greeting:

Being informed that there is now pending before you a suit in which L. H. Woodbury and Vincent Woodbury are plaintiffs in

error, and Galveston, Harrisburg & San Antonio Railway Company is defendant in error, No. 902, which suit was removed into the said Court of Civil Appeals by virtue of a writ of error to the District Court of El Paso County in and for the Forty-First Judicial District of the State of Texas, we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Civil Appeals and removed into the Supreme Court of the United States, do hereby command
116 you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the seventeenth day of June, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

117 [Endorsed:]
File No. 27089.
Supreme Court of the United States.
No. 1003, October Term, 1918.
Galveston, Harrisburg & San Antonio Railway Company
vs.
L. H. Woodbury and Vincent Woodbury.
Writ of Certiorari.
Office of the Clerk Supreme Court U. S. Received Jul. 9, 1919.

[Stamped:] Court of Civil Appeals, El Paso, Texas. Filed Jun. 24, 1919. J. I. Driscoll, Clerk.

117¼ Court of Civil Appeals, El Paso.

File No. 27089.

In the Supreme Court of the United States, October Term, 1918.

No. 1003.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,
vs.
L. H. WOODBURY & VINCENT WOODBURY.

It is stipulated between the attorneys for petitioner and respondents in the above entitled and numbered cause, in which writ of certiorari has been issued to the Judges of the Courts of Civil Appeals for the Eighth Supreme Judicial District of Texas, commanding them to send without delay to the Supreme Court of the United States the record and proceedings in said cause in which L. H. Woodbury and Vincent Woodbury are plaintiffs in error and the Galveston, Harrisburg & San Antonio Railway Company is defendant in

error, Numbered 902 on the docket of said Court of Civil Appeals, that the certified transcript of the record now on file in the Supreme Court can be taken as a return to the writ.

Witness our hands this 21st day of June, 1919.

(Signed) T. J. BEALL,
Attorneys for Petitioner, Galveston, Harrisburg & San Antonio Railway Company Which in Said Court of Civil Appeals is Defendant in Error.

(Signed) RUFUS B. DANIEL,
Attorney for L. H. Woodbury & Vincent Woodbury, Respondents, Who in said Court of Civil Appeals are Plaintiffs in Error.

BEALL, KEMP & NAGLE,
Of Counsel for Galveston, Harrisburg & San Antonio Ry. Co.

Filed Jun. 24, 1919. Court of Civil Appeals, El Paso, Texas. J. I. Driscoll, Clerk.

117½ Court of Civil Appeals, El Paso.

THE STATE OF TEXAS.
County of El Paso, ss:

I, J. I. Driscoll, Clerk of the Court of Civil Appeals in and for the Eighth Supreme Judicial District of the State of Texas, do hereby certify that the foregoing on one page is a full, true and correct copy of the original stipulation regarding the return to be made on the Writ of Certiorari issued out of the Supreme Court of the United States and filed in cause No. 902, on the docket of the said Court of Civil Appeals, wherein L. H. Woodbury et ux. are Plaintiffs in Error and Galveston, Harrisburg & San Antonio Railway Company is Defendant in Error as the same now appears on file.

In witness whereof, I hereunto set my hand and affix the seal of said Court at El Paso this the 24th day of June, A. D. 1919.

J. I. DRISCOLL,
Clerk.

[Seal Court of Civil Appeals of the State of Texas.]

117¾ [Endorsed:]
File No. 27089.
Supreme Court of the United States, October Term.
No. 1003.
In Court of Civil Appeals, Eighth Supreme Judicial District of Texas, El Paso.
L. H. Woodbury, et ux., Palintiffs in Error,
vs.
Galveston, Harrisburg & San Antonio Ry. Co., Defendant in Error.
Return to the Writ of Certiorari Issued in Said Cause.
Certified Copy of Stipulation of Counsel.
J. I. Driscoll, Clerk.

118 [Endorsed:]

File No. 27089.
Supreme Court U. S., October Term, 1919.
Term No. 360.
Galveston, Harrisburg & San Antonio Railway Co., Petitioner,
vs.
L. H. Woodbury and Vincent Woodbury.
Writ of Certiorari and Return.
Filed July 9, 1919.

(613)

6—360

JAMES D. MAHER,
CLERK.

NO. 100 3660100

IN THE

Supreme Court of the United States

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,

Petitioner,

vs.

L. H. WOODBURY AND VINCENT WOODBURY,

Respondents.

APPLICATION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

T. J. BEALL,
Attorney for Petitioner.

BAKER, BOTTS, PARKER & GARWOOD,
of Houston, Texas, and

BEALL, KEMP & NAGLE,
of El Paso, Texas, of Counsel.

No. _____

IN THE

Supreme Court of the United States

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,

Petitioner,

vs.

L. H. WOODBURY AND VINCENT WOODBURY,

Respondents.

APPLICATION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE EIGHTH SUPREME JUDICIAL DISTRICT OF TEXAS, AT EL PASO, BRINGING BEFORE THE UNITED STATES SUPREME COURT THE CASE OF MRS. L. H. WOODBURY, ET UX., PLAINTIFFS IN ERROR, VERSUS GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, DEFENDANT IN ERROR, NUMBERED 902 ON THE DOCKET OF SAID COURT OF CIVIL APPEALS.

To the Honorable Supreme Court of the United States:

Your petitioner, Galveston, Harrisburg & San Antonio Railway Company, makes application herein for Writ of Certiorari to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, at El Paso,

the same being the highest Court of the State of Texas in which a decision can be had in this suit to review the judgment and decree of said Court of Civil Appeals of date February 6th, 1919, (and in which your petitioner's motion for rehearing was over-ruled by said Court of Civil Appeals on February 27th, 1919) reversing and rendering a decree of the District Court of El Paso County, Texas, 41st Judicial District, the said 41st District Court having rendered judgment against your petitioner for $100.00, which judgment of said District Court was reversed by said Court of Civil Appeals and judgment rendered against your petitioner for $500.00

A certified copy of the entire transcript of the record in said cause in said Court of Civil Appeals is herewith filed as an exhibit to and part of this petition; and your petitioner respectfully shows:

1.

This was a suit in the District Court of El Paso County, Texas, 41st Judicial District, by Mrs. L. H. Woodbury, with whom her husband, Vincent Woodbury, subsequently joined for damages in the sum of $555.75, the alleged value of a trunk and its contents checked by her at San Antonio to El Paso, Texas, upon a ticket which had theretofore on January 25, 1917, been purchased by her at Timmins, Ontario, entitling her to transportation from Timmins, Ontario, to El Paso, Texas, and return, the plaintiff alleging that said trunk and its contents were lost between San Antonio, Texas, and El Paso, Texas.

2.

The defendant, Galveston, Harrisburg & San Antonio Railway Company, answered specially that the

plaintiff, L. H. Woodbury, was travelling at the time on an interstate or international ticket purchased by her during the year 1917, from some point in Canada, over a route extending through the various states of the United States into and through the State of Texas, and that said trunk and baggage was checked from San Antonio to El Paso on said interstate or international ticket and was and is interstate commerce and is governed by the laws of the United States and rules and regulations of the Interstate Commerce Commission, and that at the time of the purchase of said ticket and checking said baggage the defendant, Galveston, Harrisburg & San Antonio Railway Company, had promulgated and filed with said Interstate Commerce Commission its tariffs, rates, fares and charges for transportation between different points on its lines and the amount of baggage checked on each ticket and the value of said baggage; and that under the terms of said tariffs, rates and charges so filed with said Interstate Commerce Commission and which had theretofore been approved by it, it was specially provided that the valuation of said baggage was limited to $100.00 unless a greater value was declared and paid for by the passenger and that said tariffs, rates and schedules contained provisions limiting the free transportation of baggage to certain weights and the liability of the Defendant Company to $100.00, and that said tariffs, rates and schedules had a table of charges for excess weights and of excess values, which specially provided that for excess values in excess of $100.00 an additional special charge would be made; and defendant alleged that said tariffs, rates and schedules were then and there in full force and effect, and that the plaintiff did not, when she checked said baggage, or at any time, declare the value of same to be in excess

of $100.00 and did not pay for any weight in excess of 150 pounds in weight to which she was entitled without additional charge.

3.

Upon the trial of said case the plaintiff testified to the loss of the trunk and contents and to facts indicating that they were worth $500.00. She further testified that the trunk in question was checked upon a ticket purchased by her at Timmins, Ontario, to El Paso, Texas, and return; that she was travelling on said through ticket purchased in Timmins, Ontario, on January 25, 1917, from the Temiskaming & Northern Ontario Railroad Company, and that she rode upon said ticket from Timmins, Ontario, to San Antonio, Texas, and from San Antonio, Texas, to El Paso, Texas; that the contents of her trunk was not visible and were purchased by her at Timmins Ontario, and various points in the United States; that she made no statement at the time of checking her baggage as to the value of it and paid no charge for said baggage on account of the value thereof being in excess of $100.00.

The baggage agent who checked the trunk at San Antonio also testified there was no excess baggage, and the defendant introduced a duly certified copy by the Secretary of Interstate Commerce Commission filed by the Galveston, Harrisburg & San Antonio Railway Company and other roads and duly approved by said Interstate Commerce Commission, which provided that unless a greater sum is declared by the passenger and charges paid for increased valuation at the time of the delivery to carrier the value of the baggage up to and including 150 pounds checked by an adult passenger, shall be deemed and agreed to be not in excess of $100.00

in value, there being also provisions for the amount to be paid for excess in value and excess in weight.

4.

Upon the trial of the case before a Jury, the Court submitted the same upon special issues, the only issue submitted being, What was the value of the trunk and contents, to which the Jury answered, "$500.00."

5.

Thereafter the Court rendered judgment in favor of plaintiff for the sum of One Hundred Dollars.

6.

The plaintiffs, L. H. Woodbury and husband, filed a petition for writ of error to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, to review the judgment of the Trial Court and they carried up the case on a transcript and statement of facts, the case being submitted in said Court of Civil Appeals on briefs for both plaintiff and defendant in error. The said Court of Civil Appeals on February 6, 1919, reversed and rendered the case as is fully shown by its written opinion handed down herein awarding judgment for plaintiffs for the value of said trunk and contents as found by the Jury, to-wit, $500.00; the said Court of Civil Appeals holding (a) that the Cummins Amendment, approved August 9, 1916, in no wise relates to contracts made in a foreign country for transportation over the rails of common carriers when such contract is to be begun and completed in such foreign country; and (b) that the contract in question does not fall within the provisions of Section One of the original Act

regulating commerce and its amendments, the said Section One being now embodied in Paragraph 8563 of the United States Compiled Statutes of 1918, referring evidently to the United States Statutes compiled by the West Publishing Company in 1918; and (c) the contract calling for transportation from a point in Canada, through the United States and back to the point in Canada, the Act of Congress regulating commerce would not apply.

7.

The defendant in due time filed its motion for rehearing, which was by said Court of Civil Appeals over ruled on the 27th day of February, 1919.

8.

The said Court of Civil Appeals is the highest Court in the State of Texas in which decision could be had in the State. The statutes and Constitution of the State of Texas providing as follows:

> Article 1591: Judgments of the Courts of Civil Appeals shall be conclusive on the law and fact, nor shall a writ of error be allowed thereto from the Supreme Court in the following cases, to-wit:
>
> 1. Any civil case appealed from a county court or from a district court, when, under the constitution, a county court would have had original or appellate jurisdiction to try it, except in probate matters and in cases involving the revenue laws of the state or the validity of a statute.
>
> Article 5—Section 16 of the Constitution of the State of Texas reads as follows:
>
> The County Court shall have original jurisdic-

tion . . . . . of all civil cases when the matter in controversy shall exceed in value $200.00 and not exceed $500.00, exclusive of interest; and concurrent jurisdiction with the District Court when the matter in controversy shall exceed $500.00 and not exceed $1,000.00, exclusive of interest . . . .

Article 1763. Exclusive original jurisdiction. —The County Court shall have exclusive original jurisdiction in civil cases where the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest.

Article 1764. Concurrent Original Jurisdiction. —The County Court shall have concurrent jurisdiction with the District Court when the matter in controversy shall exceed five hundred and not exceed one thousand dollars, exclusive of interest.

9.

Your petitioner further shows that the present case is one in which it is proper for this Honorable Court to issue a writ of certiorari as prayed for the following reasons, among others, to-wit: the defendant in the Trial Court had set up and claimed in that Court and in the said Court of Civil Appeals a right, privilege and immunity under the Statutes of and authority, exercised under the United States, under and by virtue of which it claimed that the said trunk and contents were lost while being transported in interstate or international commerce and that by reason of the Statutes of the United States and the authority exercised thereunder its liability was limited to One Hundred dollars which claim of defendants was sustained by the Trial Court but was erro-

neously denied by the said Court of Civil Appeals, the highest court of the State of Texas in which decision could be had in this case, the said Court of Civil Appeals erroneously holding that neither the original interstate commerce act nor the Second Cummings Amendment had any application to the facts in this case.

WHEREFORE, your petitioner prays this Honorable Court will be pleased to grant a writ of certiorari in this cause to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, at El Paso, to bring up this case to this Honorable Court for such proceedings as may seem just and in connection with this petition and as a part thereof it presents herewith a transcript of the record and brief in support of this application.

T. J. Beall

Attorney for Petitioner, Galveston, Harrisburg & San Antonio Railway Company.

I hereby certify that I have examined the foregoing petition and in my opinion the petition is well founded and that the case is one in which the prayer of petitioner should be granted by this Court.

T. J. Beall

Of Counsel for petitioner.

No. .....

IN THE

Supreme Court of the United States

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,
Petitioner,

vs.

L. H. WOODBURY AND VINCENT WOODBURY,
Respondents.

BRIEF IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

This suit was filed in the District Court of El Paso County, Texas, 41st Judicial District, on April 10th, 1917, by Mrs. L. H. Woodbury, one of the Plaintiffs, for the sum of Five Hundred and fifty-five and 75-100 ($555.75) Dollars; and before the announcement of ready for trial Vincent Woodbury, the husband of Mrs. L. H. Woodbury, made himself party plaintiff. Defendant answered by general denial and specially pleaded that if plaintiff's trunk and the contents thereof was lost or destroyed the same occurred during the year 1917, to-wit, during the month of March, 1917, while the plaintiff, Mrs. L. H. Woodbury, was travelling on an interstate or international ticket purchased by her during the year

1917, from some point in Canada over a route extending through the various States of the United States into and through the State of Texas, and the said trunk was checked from San Antonio, Texas, to El Paso, Texas, on said interstate or international ticket and was interstate commerce and that plaintiff was then and there traveling on said ticket as part of the trip which she was making from the dominion of Canada through the various States of the United States, into and through the State of Texas, and that same was governed by the laws of the United States, and rules and regulations of the Interstate Commerce Commission and that at the time said ticket was purchased and at the time of checking said baggage defendant had promulgated and filed with the Interstate Commerce Comimssion its tariffs, rates and schedule of transportation between different points on its lines and the amount of baggage to be checked on each and the value of said baggage, and under the terms of said tariffs, rates, etc., so filed with the Interstate Commerce Commission, and which had theretofore been approved by it, it was especially provided that the valuation of said baggage was limited to $100.00 unless a greater value was declared and paid for by the passenger; and said answer further alleged that the plaintiff had not declared a greater value and had not paid for a greater value and had not paid any excess charges or any charges for excess baggage; and by reason of the facts aforesaid it in no event was liable for any sum in excess of One Hundred Dollars.

The plaintiff, Mrs. L. H. Woodbury, testified by deposition that she was travelling on a coupon ticket from Timmins, Ontario, to El Paso, Texas, and return, which was purchased by her on January 25, 1917, from the Temiskaming & Northern Ontario Railroad Company

at Timmins, Ontario, and that she rode upon said ticket from there to San Antonio, Texas, and rode upon said ticket from San Antonio, Texas, to El Paso, Texas, and that she had stopped over at San Antonio and re-checked her baggage from San Antonio, Texas, to El Paso, Texas, on said ticket, that she made no statement at the time of checking her baggage as to its value and paid no additional charges on said baggage on account of the value thereof being in excess of One Hundred Dollars.

W. K. JONES, Assistant Baggage Agent, at San Antonio, Texas, testified that he checked plaintiff's trunk and that there was no excess baggage; that a sign which was shown by him and introduced in evidence came from the baggage room at San Antonio, where it was on display, which sign was to the effect that rates, fares and schedules applying from said station might be inspected by any person upon application. A copy of the regulation applying to the Galveston, Harrisburg & Harrisburg & San Antonio Railway Company and certain other Railway Companies, certified to by the Secretary of the Interstate Commerce Commission was introduced in evidence, to the effect that unless a greater sum is declared by the passenger and charges paid for increased value at the time of the delivery to the carrier the value of the baggage up to and including one hundred and fifty pounds, belonging to or checked by an adult passenger shall be deemed and agreed to be not in excess of One Hundred Dollors.

The witness Jones testified that this schedule was on file in the office at San Antonio, Texas.

Upon a trial of case before a Jury the court submitted same upon a single issue, no other issue being submitted, said issue so submitted being the question as to

what the Jury found was the value of plaintiff's trunk and the contents. To this the Jury answered, "$500.00," said answer being made on February 14, 1918. Thereafter, on March 2nd, 1918, the Court rendered judgment in plaintiff's favor in the sum of One Hundred Dollars, together with interest thereon from March 14, 1917, at six per cent and all costs of suit.

From this judgment plaintiffs sued out a writ of error to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, at El Paso; and the case was submitted upon briefs for both plaintiffs in error and defendant in error, and said Court of Civil Appeals on February 6th, 1919, entered judgment reversing the judgment of the Trial Court and rendering judgment in favor of plaintiffs in the sum of Five Hundred Dollars. The Galveston, Harrisburg & San Antonio Railway Company, defendant in error, filed motion for re-hearing, which said motion was over-ruled by said Court of Civil Appeals on February 27, 1919.

In reversing and rendering the judgment as aforesaid, the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, which is the highest Court of the State of Texas in which a decision could be had in this case, held, First: That the Second Cummins Amendment, approved August 9, 1916, in no wise relates to contracts made in a foreign country for transportation over the rails of common carriers when such contract is to be begun and completed in such foreign country; and Second: That the contract in question does not fall within the provisions of Section One of the Original Act regulating Commerce and its Amendments, said Section One being now embodied in Paragraph 8563 of the United States Compiled Statutes of 1918, compiled by the West

Publishing Company; and Third: The contract calling for transportation from a point in Canada, through the United States and back to said point in Canada, the Act of Congress did not apply.

Your petitioner files the following as its specifications and assignments of error upon which it relies to reverse the judgment of said Court of Civil Appeals, to-wit:

1.

The Honorable Court of Civil Appeals for the Eighth Supreme Judicial District of Texas erred in holding that the contract in question did not fall within the provisions of Section One of the original Act regulating commerce and its amendments, Paragraph 8563, United States Compiled Statutes, 1918.

2.

The Honorable Court of Civil Appeals for the Eighth Supreme Judicial District of Texas erred in holding that the original Interstate Commerce Act as set forth in Article 8563 of the United States Compiled Statutes of 1918, compiled by the West Publishing Company did not govern this case.

3.

The Honorable Court of Civil Appeals for the Eighth Supreme Judicial District of Texas erred in holding that a suit for damages for loss of baggage checked by plaintiff from San Antonio, Texas, to El Paso, Texas, on a ticket purchased by her from Timmins, Ontario, to El Paso, Texas, and return was not governed by the Act of Congress of the United States regulating commerce.

4.

The Honorable Court of Civil Appeals for the Eighth Supreme Judicial District of Texas erred in holding that in a case in which the Galveston, Harrisburg & San Antonio Railway Company had filed with and had approved by the Interstate Commerce Commission its rates and tariffs limiting its liability for loss of baggage to $100.00, where a greater value was not declared and paid for and in which the plaintiff sued the said Galveston, Harrisburg & San Antonio Railway Company for an amount in excess of $100.00 for loss of baggage checked from San Antonio, Texas, to El Paso, Texas, on a ticket purchased by her during the year 1917, from Timmins, Ontario, to El Paso, Texas, and return, she was entitled to recover a greater sum than $100.00, for baggage lost between San Antonio, Texas, and El Paso, Texas, even though she had not declared a greater value or paid additional charges therefor.

We submit that the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas was in error in holding that the original Interstate Commerce Act is not applicable to this case. The said Act provided, among other things, that "The provisions of this Act shall apply.... to any common carrier or carriers engaged in the transportation of passengers or property .... from any place in the United States to an adjacent foreign country or from any place in the United States through a foreign country to any other place in the United States and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment or shipped from a foreign country to any place in the United States and

carried to such place from a port of entry either in the United States or an adjacent foreign country."

In the case of Texas & Pacific Railway Company, vs. Intersate Commerce Commission, 162 U. S. 212, Mr. Justice Shiras, speaking for the United States Supreme Court, says:

> "Addressing ourselves to the express language of the statute, we find in its first section that the carriers that are declared to be subject to the Act are those engaged in the transportation of passengers or property wholly by rail, or partly by rail and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment, from one State or territory of the United States, or District of Columbia, or any place in the United States to an adjacent foreign country or from any place in the United States, through a foreign country to any other place in the United States, also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment or shipped from a foreign country to any place in the United States and carried to some place from the port of entry in the United States or to an adjacent country.
>
> It would be difficult to use language more indisputably signifying that Congress had in view the whole field of commerce except commerce wholly within the State, as well as that between the States and territories as those going or coming from foreign countries."

In the case of Boston, etc. R. R. Co. vs. Hooker, 233 U. S. 97, the Court held, prior to the passage of the Cummins Amendment, that in an interstate shipment a person who did not declare or pay for a greater value was limited in a suit for the recovery of damages for loss of baggage to the values stated in schedules filed

with and approved by the Interstate Commerce Commission.

It will not do to say, as suggested by the Eighth Court of Civil Appeals for Texas that it is not Interstate commerce because the contract was from a point in Canada to El Paso and return to said point in Canada. That would be equivalent to saying that it was no commerce at all because the ticket called for a return to the place of departure.

For additional authorities bearing on the proposition that the shipment in question constituted interstate commerce we submit the following:

T. & N. O. Ry. Co. vs. Sabine Tram Co., 227 U. S., 111,
Wabash Ry. Co. vs. Illinois, 118 U. S., 557,
Coe vs. Errol, 116 U. S., 512,
Cutting vs. Florida Ry. & Navigation Co., 46 Federal Reporter, 641,
Houston Navigation Co. vs. Ins. Co., 89 Texas, 1,
State vs. G. C. & S. F. Ry. Co., 44, S. W., 542,
State vs. [illegible] & G. N. Ry. Co., 71 S. W., 794,
G. C. & S. F. Ry. Co., vs. Ft. Grain Co., 72 S. W., 419,

If the contract in question came under the original Interstate Comerce Act, and if as said by said Court of Civil Appeals the Cummins Amendment did not purport to cover the case in question, then the rights of the parties would in no way be effected by the Cummins Amendment, and the rights of defendant are in no wise effected thereby.

We submit that as said by the United States Supreme Court in the case of Texas & Pacific Ry. Co. vs. Interstate Commerce Commission, surpa, it would be difficult to

use language more indisputably signifying that Congress had in view the whole field of commerce, except commerce wholly within the State, as well as that between the United States and territories as that going to or coming from foreign countries.

Petitioner prays therefore that the writ of certiorari be granted and that upon hearing the judgment and decree of the Court of Civil Appeals for the Eighth Supreme Judicial District be reversed and judgment be here rendered affirming the judgment of the Trial Court, to-wit, that plaintiffs recovery be limited to $100.00.

Respectfully submitted,

T. J. Beall

Attorney for petitioner.

BAKER, BOTTS, PARKER & GARWOOD,
of Houston, Texas, and

BEALL, KEMP & NAGLE,
of El Paso, Texas, of Counsel.

No. 1003

IN THE

Supreme Court of the United States

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,

Petitioner,

vs.

L. H. WOODBURY AND VINCENT WOODBURY,

Respondents.

BRIEF FOR RESPONDENTS.

To the Honorable Supreme Court of the United States:

In view of the fact that petitioner has applied for Writ of Certiorari, and not a Writ of Error, and because of the very simplicity of the question of law, in this cause, for the sake of brevity, your respondents will endeavor to show such statements of fact, and only such, as are deemed essential to support one proposition, and these, we shall presently show:

First Proposition

The "transportation," by a common carrier or carriers of a "passenger" from Timmins, Ontario, Canada to El Paso, Texas, and return to Timmins, Ontario, Canada, upon a round trip ticket purchased at Timmins, Ontario, Canada, is not such "transportation" as is included within the terms of Section One of the Act to Regulate Commerce, approved February 4th, 1887, and acts amendatory thereof or supplmentary thereto.

Statement

The findings of fact made by the Honorable Court of Civil Appeals of the Eighth Supreme Judicial District of the State of Texas is as follows (Tr. p. 94):

> "On January 25, 1917, Mrs. Woodbury purchased from the Temiskaming & Northern Ontario Railroad Company at Timmins, in the Province of Ontario, Dominion of Canada, a coupon ticket good for transportation from Timmins to El Paso, Texas, and return. At San Antonio, Texas, she boarded a train of appellee for passage to El Paso, traveling upon said ticket. At San Antonio she checked her trunk to El Paso and it was transported upon the same train as that upon which she was traveling. The baggage master at San Antonio issued to her an ordinary baggage check for the trunk. It contained no limitation of liability. The baggage was checked and transported free of charge upon the ticket Mrs. Woodbury was traveling upon. The ticket was not offered in evidence and the record is silent as to whether or

not it contained any limitation of liability. The train carrying Mrs. Woodbury was wrecked between San Antonio and El Paso, and her trunk was destroyed by fire originating from the wreck.

She brought this suit against appellee to recover the sum of $555.75, the alleged value of the trunk and its contents."

That portion of petitioner's pleading, as defendant below, deemed material to the question of law, is as follows (Tr. p. 95):

"Further answering, defendant says that if plaintiff's trunk and contents were lost or destroyed or not delivered to plaintiff that the same occurred during the year 1917, to-wit, during the month of March, 1917, and that at the time the plaintiff, L. H. Woodbury, was traveling on an interstate *or international* ticket, purchased by her during the year 1917, from some point in Canada and over a route extending through the various states of the United States *into* and *through* the State of Texas, and *that said trunk and baggage was checked from San Antonio, Texas, to El Paso, Texas,* on said inter-state *or international* ticket and was and is interstate commerce."

Your respondent specially demurred to the foregoing plea (Tr. p. 10) and objected to the evidence of tariffs on file with the Interstate Commerce Commission on the grounds that her "transportation" was not subject to the Act to Regulate Commerce. (Tr. p. 19, 22.) The Trial Court overruled such demurrer (Tr. p. 25-26) and the said actions of the Trial Court were

assigned as errors in the Honorable Court of Civil Appeals. (Tr. p. 65-66, 71, 74-75-76.)

Authorities

Section One of the Act to Regulate Commerce, approved Feb. 4, 1887.

Sect. 8563, page 9054-5, Vol. 8 (West Publishing Co.), United States Compiled Statutes (1916).

Barnes Fed. Code (1919), Sect. 7884, page 1873.

United States v. Philadelphia & R. Ry. Co., 188 Fed. Rep. 484.

In re Heated Car Service Regulations, 50 I. C. C. Rep. 620, 623.

M. Canales v. Galveston, H. & S. A. Ry. Co., 37 I. C. C. Rep. 573-574.

Seymour v. Morgan L. & T. R. R. & S. S. Co.,35 I. C. C. Rep. 492.

Mexican National Ry. Co. v. Ware, 60 S. W. Rep. 343.

Drozinski v. Hamburg Amer. Line, 181 S. W. Rep. 263, 266.

Argument

Let us, therefore, make a brief common sense analysis of the *distinct classes* of "transportation" specifically named in Section One of the Act to Regulate Commerce. To do this we will tabulate the language thereof, because "seeing is believing," and leaving out immaterial language it reads (Italics ours):

"The provisions of this Act shall apply * * * to any common carrier or carriers engaged in the transportation of *passengers* or *property* wholly by railroad. * * *.

from one State or Territory of the United States or the District of Columbia		to any other State or Territory of the United States or District of Columbia,
	or	
from one place in a Territory		to another place in the same territory,
	or	
from any place in the United States		to an adjacent foreign country,
	or	
from any place in the United States through a foreign country		to any other place in the United States,

and also to the transportation in like manner of *property* shipped

from any place in the United States		to a foreign country and carried from such place to a port of trans-shipment,
	or	
from a foreign country		to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.

> *Provided, however,* that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of *property* wholly within one State and not shipped to or from a foreign country from or to any State or Territory *as aforesaid.*"

Now the foregoing analysis clearly shows that the "transportation" of "*passengers*" is limited to the first four distinctly analyzed classes. The "transportation" of a "*passenger*" must begin within the geographical limits of the United States or one of its Territories. Mrs. Woodbury's "transportation" *began* in Timmins, Ontario, Canada, and it ended there, and after she had actually returned there she made her second deposition which is a part of the evidence of record upon which the findings of fact were made. Indeed, a layman, not a lawyer, can clearly see that *her* "transportation" was *not* subject to the terms of the Section One of the Act to Regulate Commerce. The petitioner has applied for a Writ of Certiorari, upon the *sole ground* (Petitioner's Brief, p. 13, 14) that the *ticket* or contract upon which Mrs. Woodbury was traveling was subject to Section One of the Act to Regulate Commerce. There is no dispute as to the findings of fact made by the Honorable Court of Civil Appeals with respect to the "transportation" of her trunk. The petitioner pleaded that it, as a common carrier, *received her trunk* at San Antonio, Texas, for transportation to El Paso, Texas. There is no evi-

dence that Mrs. Woodbury brought her trunk from a foreign country. The "transportation" of *her trunk* is especially *exempted* from the terms of Section One of the Act to Regulate Commerce in the *proviso*, above set forth, because it is shown that the transportation of said trunk was "wholly within one state." Moreover, it must be observed, that with respect to liability of a common carrier of baggage, the *Cummin's Amendment* (Aug. 9, 1916, c. 301, 39 Stat. 441) to the Act to Regulate Commerce confines and narrows the application of the *original* Act to Regulate Commerce down to *that transportation* of *"property"* which falls within the *first, second* and *third* distinctly analyzed classes, as are hereinbefore set out.

Your respondents urge the importance of the decisions of the Honorable Interstate Commerce Commission, which have been cited under *Authorities*, because this Honorable Court in the case of New York N. H. & H. R. Co. vs. I. C. C., 200 U. S. 461, 50 L. Ed. 515, 26 Sup. Ct. 272 at 281 said:

> "We consider that the interpretation given by the commission in those cases to the Act to Regulate Commerce is now binding, and as restricted to the precise conditions which were passed on in the case referred to, must be applied to all strictly identical cases in the future; at least until Congress has legislated on the subject. We make this concession because we think we are constrained to do so, in consequence of the familiar rule that a construction made by the body charged with the enforcement of a statute, which construction has long

obtained in practical execution, and has been impliedly sanctioned in the re-enactment of the statute without alteration in the particulars construed, when not plainly erroneous, must be treated as read into the statute."

Respondents respectfully suggest that the case of Texas & Pacific Ry. Co. vs. Interstate Commerce Commission, 162 U. S. 212 (Petitioner's Brief, p. 15), is not in point, because in that case the Interstate Commerce Commission had dealt with rates *from a port of entry* in the United States applicable to property shipped from a foreign country "to a place in the United States" from *such port of entry.* The port being New Orleans, La. That "transportation" did fall within the *sixth* distinctly analyzed class of interstate commerce, as is above set forth in this brief.

The case of Boston, etc., R. R. Co. vs. Hooker, 233 U. S. 97 (Petitioner Brief p. 15), is not in point, because the "transportation" of Katharine Hooker was from Boston, Mass., to Senapec, N. H., and therefore fell within the *first* distinctly analyzed class of interstate commerce as is in this brief above set forth.

The case of T. & N. O. Ry. Co. vs. Sabine Tram Co., 227 U. S. 111 (Petitioner's brief, p. 16), is not in point because in that case the "transportation" fell within the *fifth* distinctly analyzed class of interstate commerce, as is above set forth, being shipments from a place in the United States and carried from such place to a port of trans-shipment, for export.

The case of Wabash Ry. Co. vs. Illinois, 118 U. S. 557 (Petitioner's Brief, p. 16), is not in point because

the "transportation" in that case was from points in Illinois to New York and therefore comes within the *first* distinctly analyzed class of interstate commerce state commerce as is above set forth.

And likewise Coe vs. Errol, 116 U. S. 512, (Petitioner's brief, p. 16), is not in point because, taxation was the issue, yet the "transportation" in that case was from Errol, N. H. to Lewiston, Maine, and therefore comes within the *first* distinctly analyzed class of interstate commerce as is set forth above.

The case of Cutting vs. Florida Ry. & Nav. Co., 46 Fed. Rep. 641, (Petitioner's Brief, p. 16), is not in point because the "transportation" in that case was shipments of oranges from points in Florida to another state and comes within the *first* distinctly analyzed class of interstate commerce as is above set forth.

The case of Houston Navigation Co. vs. Ins. Co., 89 Tex. 1; 32 S. W. 889 (Petitioner's Brief, p. 16), is not in point because the "transportation" in that case was cotton shipped from Texas to New York and therefore fell within the *first* distinctly analyzed class of interstate commerce as is above set forth.

The case of State vs. G. C. & S. F. Ry. Co., 44 S. W. 542, (Petitioner's Brief, p. 16), is not in point because the "transportation" was shipments of sheep from Texas, to Kansas City, and therefore comes within the *first* distinctly analyzed class of interstate commerce as is above set forth.

The case of State vs. I. & G. N. Ry. Co., 71 S. W.

944, (Petitioner's Brief, p. 16), is not in point because the "transportation" was cotton from points in Texas to Galveston, Texas, " a port of trans-shipment," for export to foreign destinations, and therefore, came within the *fifth* distinctly analyzed class of interstate commerce as is above set forth. The page reference in this case furnished in petitioner's brief is in error. We have shown the correct page number.

The case of G. C. & S. F. Ry. Co. vs. Ft. Grain Co., 72 S. W. 419, (Petitioner's Brief, p. 16), is not in point because the "transportation" in that case was from Texarkana, *Arkansas*, to points in Texas, and therefore, comes within the *first* distinctly analyzed class of interstate commerce as is above set forth.

Respondents now apologize for having pointed out the inapplicability of the foregoing cases, cited by the petitioner, in view of the fact that respondents have already analyzed Section One of the Act to Regulate Commerce, which analysis *conclusively proves* that Mrs. Woodbury's ticket or contract for transportation did not fall within the terms of Section One of the Act to Regulate Commerce, but, we have pointed out the inapplicability of those cases, to better illustrate to this Honorable Court that where any decision has ever been made by a competent court of record with respect to "transportation" of *property* or *passengers*, where it was held that such "transportation" was subject to the terms of the Act to Regulate Commerce, then such "transportation" did clearly fall within one of the

six distinctly analyzed classes of interstate commerce as is above set forth.

Your respondents respectfully suggest that in view of the *very* simplicity of the question presented, it can safely be surmised that the only purpose of the petitioner in making application for a Writ of Certiorari, in the above entitled cause was to effect a delay of its payment to Mrs. Woodbury of her damages. We respectfully submit that under the facts shown neither the Act to Regulate Commerce, nor its amendments, gave the petitioners any federal right, and this, we believe, has been clearly demonstrated.

WHEREFORE, respondents pray that the Application for Writ of Certiorari be denied and that such further order as to penalties, may be made as this Honorable Court may deem necessary in the premises.

Respectfully submitted,

Rufus B. Daniel

Attorney for L. H. Woodbury, and
Vincent Woodbury, *Respondents.*

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY v. WOODBURY ET AL.

CERTIORARI TO THE COURT OF CIVIL APPEALS, EIGHTH SUPREME JUDICIAL DISTRICT, OF THE STATE OF TEXAS.

No. 100. Submitted November 15, 1920.—Decided December 13, 1920.

1. The declaration of the Act to Regulate Commerce (§ 1) that it shall apply to any common carrier engaged in the transportation of persons or property from any place in the United States to an adjacent foreign country, contemplates its application also to the transportation by such a carrier from the adjacent foreign country into the United States, since the test of the application of the act is the field of the carrier's operation and not the direction of the movement. P. 359.
2. Where a passenger traveling from Canada to Texas and return without any express stipulation as to the liability of the carrier for loss of baggage, through the fault of the carrier lost her trunk in Texas on the journey out, *held*, that the amount of her recovery was limited under the Carmack Amendment by the carrier's published tariffs filed with the Interstate Commerce Commission. *Id.*
3. The right of a carrier, under the Carmack Amendment, to limit by tariff the amount of its liability for the baggage of a passenger, was not altered by the Act of March 4, 1915, known as the Cummins Amendment, as amended August 9, 1916. *Id.*

209 S. W. Rep. 422, reversed.

THE case is stated in the opinion.

Mr. T. J. Beall for petitioner.

Mr. Rufus B. Daniel for respondents.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

On March 14, 1917, Mrs. Woodbury took the Galveston, Harrisburg & San Antonio Railway at San Antonio,

Texas, for El Paso, Texas, and checked her trunk, which she took with her. It was lost and she sued the company in a state district court for the value of trunk and contents, which the jury found to be $500. Mrs. Woodbury was traveling on a coupon ticket purchased at Timmins, Ontario, from a Canadian railroad, entitling her to travel over it and connecting lines, from Timmins to El Paso and return, apparently with stop-over privileges. When the trunk was lost she was on her journey out. She was not told when she purchased her ticket or when she checked her trunk that there was any limitation upon the amount of the carrier's liability. It did not appear whether the ticket purchased contained notice of any such limitation, nor did it appear what was the law of Canada in this respect. The company insisted that Mrs. Woodbury was on an interstate journey; and that under the Act to Regulate Commerce, February 4, 1887, c. 104, 24 Stat. 379, as amended, it was not liable for more than $100; since it had duly filed with the Interstate Commerce Commission and published a tariff limiting liability to that amount unless the passenger declared a higher value and paid excess charges, which Mrs. Woodbury had not done. She insisted that her transportation was not subject to the Act to Regulate Commerce, because it began in a foreign country; and that the liability was governed by the law of Canada, which should in the absence of evidence be assumed to be like the law of Texas, the forum; and that by the law of Texas the limitation of liability was invalid. The trial court held that she was entitled to recover only $100, and entered judgment for that amount. This judgment was reversed by the Court of Civil Appeals, which entered judgment for Mrs. Woodbury in the sum of $500. 209 S. W. Rep. 432. The case came here on writ of certiorari, 250 U. S. 637. The only question before us is the amount of damages recoverable.

If Mrs. Woodbury's journey had started in New York

instead of across the border in Canada, the provision in the published tariff would clearly have limited the liability of the carrier to $100. For her journey would have been interstate although the particular stage of it on which the trunk was lost lay wholly within the State of Texas. Compare *Texas & New Orleans R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111. And the Carmack Amendment under which carriers may limit liability by published tariff applies to the baggage of a passenger carried in interstate commerce, *Boston & Maine R. R. Co.* v. *Hooker*, 233 U. S. 97; although it does not deal with liability for personal injuries suffered by the passenger. *Chicago, Rock Island & Pacific Ry. Co.* v. *Mucher*, 248 U. S. 359. The subsequent legislation, the Cummins Amendment, Act of March 4, 1915, c. 176, 38 Stat. 1196, as amended by the Act of August 9, 1916, c. 301, 39 Stat. 441, has not altered the rule regarding liability for baggage.

But counsel for Mrs. Woodbury insists that solely because her journey originated in Canada the provisions of the Act to Regulate Commerce do not apply. The contention is that § 1 of the Act of 1887 does not apply to the transportation of passengers from a foreign country to a point in the United States. To this there are two answers. The first is that the transportation here in question is not that of a passenger but of property. *Boston & Maine R. R. Co.* v. *Hooker*, *supra*. The second is that the act does apply to the transportation of both passengers and property from an *adjacent* foreign country, such as Canada. Section 1 declares that the act applies to "any common carrier . . . engaged in the transportation of passengers or property . . . from any place in the United States to an adjacent foreign country." A carrier engaged in transportation by rail *to* an adjacent foreign country is, at least ordinarily, engaged in transportation also *from* that country to the United States. The test of the application of the act is not the direction of the movement, but

the nature of the transportation as determined by the field of the carrier's operation. This is the construction placed upon the act by the Interstate Commerce Commission. *International Paper Co.* v. *Delaware & Hudson Co.*, 33 I. C. C. 270, 273, citing *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197. It is in harmony with that placed upon the words of § 1 of the Harter Act, February 13, 1893, c. 105, 27 Stat. 445, "any vessel transporting merchandise or property from or between ports of the United States and foreign ports," which in *Knott* v. *Botany Mills*, 179 U. S. 69, 75, were construed to include vessels bringing cargoes from foreign ports to the United States. There is a later clause in § 1 which deals specifically with the transportation of property to or from foreign countries; but cases arising under that clause are not applicable here. That clause applies where the foreign country is *not* adjacent to the United States. The cases which hold that the act does not govern shipments from a foreign country in bond through the United States to another place in a foreign country, whether adjacent or not, are also not in point. Compare *United States* v. *Philadelphia & Reading Ry. Co.*, 188 Fed. Rep. 484; *In the Matter of Bills of Lading*, 52 I. C. C. 671, 726–729; *Canales* v. *Galveston, Harrisburg & San Antonio Ry. Co.*, 37 I. C. C. 573.

Since the transportation here in question was subject to the Act to Regulate Commerce, both carrier and passenger were bound by the provisions of the published tariffs. As these limited the recovery for baggage carried to $100, in the absence of a declaration of higher value and the payment of an excess charge, and as no such declaration was made and excess charge paid, that sum only was recoverable.

Reversed.